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District of Oklahoma—Continued

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[fol. 1]

IN THE
DISTRICT COURT OF THE UNITED STATES
WESTERN DISTRICT OF OKLAHOMA

Civil No. 4039

G. W. McLAURIN, Plaintiff,

vs.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION,
BOARD OF REGENTS OF UNIVERSITY OF OKLAHOMA,
GEORGE L. CROSS, LAWRENCE H. SNYDER
AND J. E. FELLOWS, Defendants

COMPLAINT—Filed August 5, 1948

1. The jurisdiction of this Court is invoked under Judicial Code, Section 24 (1) (28 U.S.C., Section 41 (1)), this being a suit in equity which arises under the Constitution and laws of the United States, viz., the Fourteenth Amendment of said Constitution and Sections 41 and 43 of Title 8 of the United States Code, wherein the matter in controversy exceeds, exclusive of interest and costs, the sum of \$3000. The jurisdiction of this Court is also invoked under Judicial Code, Section 24 (14) (24 U.S.C., Section 41 (14)), this being a suit in equity authorized by law to be brought to redress the deprivation under color of law, statute, regulation, custom and usage of a state of rights, privileges and immunities secured by the Constitution of the United States, viz., the Fourteenth Amendment to said Constitution, and of rights secured by laws of the United States providing for equal rights of citizens of the United States and of all persons within the jurisdiction of the United States, viz., Sections 41 and 43 of Title 8 of the United States Code. The jurisdiction of this Court is also invoked under Judicial Code, Section 266 (28 U.S.C. Section 380), this being an action for an interlocutory injunction restraining the enforcement and execution of a state statute and restraining the order, policy, custom and usage of an administrative board of a state pursuant to such statute.

2. All individual parties to this action, both plaintiff and defendants, are citizens of the United States and of the

and color pursuant to the Oklahoma Statutes set out in the preceding paragraph, which statutes have been, are being and unless redress is granted by this Court will continue to be enforced by the orders of the defendants so as to deny to the plaintiff and others on whose behalf he sues the rights guaranteed by the equal protection and due process clauses of the Fourteenth Amendment; and section 43 of Title 8 of the United States Code. The above named statutes are enforced by the defendants to exclude plaintiff and other qualified Negro applicants solely because of race and color from attending the University of Oklahoma to take courses of education offered only at said University.

[fo]. 8] 14. The Board of Regents in adopting and enforcing the order, policy, custom and usage set out above acted and is acting under and pursuant to the statutes of Oklahoma, as set out above. The action of the defendants in enforcing said order, policy, custom and usage pursuant to state statutes denies to the plaintiff and others similarly situated rights guaranteed by the Constitution and laws of the United States and is therefore unconstitutional and void. Insofar as the Statutes of Oklahoma set out above are applied and enforced by defendants to deprive the plaintiff of the right to attend the University of Oklahoma said statutes are unconstitutional and void as denying to plaintiff the equal protection and due process of law guaranteed by the Fourteenth Amendment to the United States Constitution.

15. The plaintiff was denied admission to the Graduate School of the University of Oklahoma solely because of race and color for the regular midterm beginning February, 1948. Plaintiff is informed and believes and therefore avers that the next regular term of the Graduate School of the University of Oklahoma will begin in September, 1948. Plaintiff's application has not been accepted up to the present time and plaintiff is informed and believes and therefore avers that he will not be admitted to the September term and will continue to be excluded solely because of race or color pursuant to the order, policy, custom and usage adopted and maintained by defendants acting under and pursuant to the Statutes of Oklahoma unless this Court enjoins the enforcement of the above mentioned order, policy, custom and usage by the defendants. Immediate

and irreparable injury, loss and damage will result to [fol. 9] plaintiff and others on whose behalf he sues by reason of the enforcement of the above mentioned order, policy, custom and usage as has been particularly set forth above.

16. The action of the defendants in adopting and maintaining the order, policy, custom and usage complained of above acting under and pursuant to the Statutes of Oklahoma set out above denies to the plaintiff and others on whose behalf he sues the liberty guaranteed by the Fourteenth Amendment of the United States Constitution.

17. The defendants by their illegal and wrongful acts complained of herein damaged this plaintiff in the sum of and to the extent of Five Thousand (\$5000.00) Dollars.

18. The plaintiff and others similarly situated and affected, on whose behalf this suit is brought, are suffering irreparable injury and are threatened with irreparable injury in the future by reason of the acts herein complained of; they have no plain adequate or complete remedy to redress the wrong and illegal acts herein complained of other than this action for damages, and injunction; any other remedy to which plaintiff and those similarly situated could be remitted would be attended by such uncertainties and delays as to deny substantial relief, would involve multiplicity of suits, and would cause further irreparable injury, damage, vexation and inconvenience to the plaintiff and those similarly situated.

19. The defendants are enforcing and will continue to enforce the order, policy, custom and usage set out above and unless this Court issues a preliminary injunction the rights of plaintiff and others on whose behalf he sues to attend the graduate school of the University of Oklahoma beginning the fall term of this year, will be unprotected and lost.

[fol. 10] WHEREFORE, plaintiff respectfully prays Court that upon filing of this complaint:

1. That this Court immediately convene a Three Judge Court as required by Section 266 of the Judicial Code.

2. That this Court issue a preliminary or interlocutory injunction restraining the defendants and each of them,

[fol. 14] IN UNITED STATES DISTRICT COURT

MOTION FOR PRELIMINARY INJUNCTION—Filed Aug. 5, 1948

Plaintiff, G. W. McLaurin, moves the Court for a preliminary injunction in the above-entitled cause, enjoining the defendants, their agents, servants, employees, attorneys, and all persons in active concert or participation with them, pending the final hearing and determination of this cause, from

1. Excluding the plaintiff and others on whose behalf he sues from admission to courses offered only at the graduate schools of the University of Oklahoma solely because of race and color;

2. Enforcing and maintaining the order, policy, custom and usage adopted pursuant to Sections 455, 456 and 457 of the Oklahoma Statutes of 1941 whereby the plaintiff and other qualified Negro applicants are excluded from admission to courses offered only at the graduate schools of the University of Oklahoma solely because of race and color;

3. All action pursuant to Sections 455, 456 and 457 of the Oklahoma Statutes of 1941 which preclude the admission of the plaintiff and other qualified Negroes to courses offered only at the graduate schools of the University of Oklahoma solely because of race and color on the grounds that said statutes as applied to this plaintiff and others on whose behalf he sues denies to them the rights guaranteed by the equal protection and due process clauses of the Fourteenth Amendment, the liberty guaranteed by the Fourteenth Amendment to the United States Constitution and Sections 41 and 43 of Title 8 of the United States Code.

The grounds in support of this motion are as follows:

1. Unless restrained the defendants will continue to exclude the plaintiff and others on whose behalf he sues from admission to courses offered only at the graduate schools of the University of Oklahoma solely because of race and color; and will continue enforcing and maintaining

[fol. 15] the order, policy, custom and usage adopted

pursuant to Sections 455, 456 and 457 of the Oklahoma Statutes of 1941 whereby the plaintiff and other qualified Negro applicants are excluded from admission to the graduate schools of the University of Oklahoma solely because of race and color;

2. Immediate and irreparable injury, loss, and damage will result to plaintiff by reason of the action of defendants in excluding plaintiff and others similarly situated from the next session of the graduate schools of the University of Oklahoma which begins in September 1948;

3. If defendant continues to exclude the plaintiff and others on whose behalf he sues from admission to the graduate schools of the University of Oklahoma solely because of race and color, and continues to enforce and maintain the order, policy, custom and usage adopted pursuant to Sections 455, 456 and 457 of the Oklahoma Statutes of 1941 whereby the plaintiff and other qualified Negro applicants are excluded from admission to the graduate schools of the University of Oklahoma solely because of race and color, any judgment which this Court may later render on final determination of this cause will be ineffective;

4. If this preliminary injunction be granted, the injury, if any, to defendant herein, if final judgment be in his favor, will be inconsiderable and will be adequately indemnified by bond.

Amos T. Hall, 107½ N. Greenwood Ave., Tulsa, Oklahoma;
Thurgood Marshall, 20 West 40 Street, New York, Attorneys for Plaintiff.

NOTICE OF MOTION FOR PRELIMINARY INJUNCTION

To: Oklahoma State Regents for Higher Education;
Board of Regents of University of Oklahoma
George L. Cross, Lawrence H. Snyder and J. E.
Fellows

Please take notice that the undersigned will bring the above motion for a preliminary injunction on for hearing before this Court at United States Courts and Post Office [fol. 16] Building, Oklahoma City, Oklahoma on the 23 day of Aug., 1948 at 10: A. M. o'clock of that day or as soon thereafter as counsel can be heard.

Date

Amos T. Hall, 107 1/2 N. Greenwood Ave., Tulsa, Oklahoma; Thurgood Marshall, 20 West 40th Street, New York, N. Y., Attorneys for Plaintiff.

[fol. 17]

IN THE UNITED STATES DISTRICT COURT

ORDER CONVENING THREE JUDGE COURT—Aug. 6, 1948

It appearing from the complaint filed in this cause that the constitutionality of a state statute is involved, and the plaintiff having prayed for a three-judge hearing, as provided by Section 266 of the Judicial Code, the cause is set for hearing on the application for a preliminary injunction, August 23, 1948 at 10:00 A. M., and Judge Alfred P. Murrah, of the Circuit Court of Appeals, and Judge Bower Broadbuss, District Judge in this District, are called to sit with the undersigned District Judge in the hearing of said matters.

Dated this 6th day of August, 1948.

Edgar S. Vaught, United States District Judge.

[fol. 18] IN THE DISTRICT COURT OF THE UNITED STATES,
WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

ANSWER—Filed Aug. 23, 1948.

Come now the above defendants and in answer to the complaint filed herein, allege and state:

1. The complaint fails to state a claim against defendants upon which relief can be granted.

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SUPREME COURT, U.S.

339-637

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 34

G. W. McLAURIN, APPELLANT,

vs.

**OKLAHOMA STATE REGENTS FOR HIGHER EDU-
CATION, BOARD OF REGENTS OF UNIVERSITY
OF OKLAHOMA, ET AL.**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

FILED MARCH 1, 1949.

2. The court, in so far as the cause of action in the complaint seeking to recover damages against defendants in the sum of \$5,000.00 is concerned, lacks jurisdiction not only over the subject matter of said cause of action but over the person of defendants in relation thereto, because said cause of action is in reality, if not in name, a suit against the State of Oklahoma to which the state has not given its consent.

3. The court lacks jurisdiction over the subject matter of this action and over the person of defendants because the amount in controversy is less than \$3,000.00, exclusive of interest and costs.

4. The court lacks jurisdiction over the subject matter of this action and over the person of defendants because said action, in effect, seeks to mandamus defendants to admit plaintiff to the course of instruction set forth in his complaint.

[fol. 19] 5. Defendants deny that this court has jurisdiction of this cause as is in effect asserted in *Paragraph 1* of the complaint.

6. Defendants admit the material allegations of fact set forth in *Paragraph 2* of the complaint.

7. Defendants admit the material allegations of fact set for in *Paragraph 3* of the complaint, except the allegation that plaintiff has "in all particulars met the qualifications necessary for admission to the Graduate School of the University of Oklahoma in the field of education, which fact the defendants have admitted," and in this connection allege that while plaintiff is scholastically and morally qualified for "tentative admission" to said school in said field (and, upon the furnishing of certain transcripts of credits, to unqualified admission thereto), he does not have the qualifications necessary for admission to said school in said field by reason of the statutory provisions of this state abstracted in *Paragraph 12* of the complaint. In relation to the "furnishing of certain transcripts of credits," above mentioned, defendants further allege that when plaintiff on January 28, 1948 filed the application referred to in *Paragraph 7* of the complaint for admission "to the graduate school of the University of Oklahoma in the field of education" (same being refused and rejected on February

2, 1948, as alleged in said paragraph), which application stated that plaintiff had attended Langston University, Jackson College, Kansas State Teachers College and the University of Kansas, plaintiff failed to attach to said application transcripts of his credits at said institutions (other than at Langston University), as required by the rules and regulations of the University of Oklahoma, which failure, although then called by said authorities to the attention of plaintiff, was not then, nor has since been remedied.

8. Defendants deny the material allegations of fact, if any, and the conclusions of law set forth in *Paragraph 4* [fol. 20] of the complaint, and in this connection allege that if this is a class action, as contended by plaintiff in said paragraph, the only persons coming within said class are negroes qualified to take a course of instruction given at the University of Oklahoma, but not given at Langston University, to take which a qualified negro duly applied for admission to the University of Oklahoma on or about January 28, 1948, the date of plaintiff's application.

9. Defendants admit the material allegations of fact set forth in *Paragraph 5* of the complaint.

10. Defendants admit the material allegations of fact set forth in *Paragraph 6* of the complaint.

11. Defendants admit the material allegations of fact set forth in *Paragraph 7* of the complaint, except the allegation that plaintiff possessed and still possesses all "other lawful qualifications" for admission to the course of instruction of the University of Oklahoma referred to therein, and the allegation that plaintiff's application for admission to said course was "arbitrarily and illegally" rejected.

12. Defendants admit the material allegations of fact set forth in *Paragraph 8* of the complaint, subject to the exceptions noted in *Paragraph 11* hereof.

13. Defendants admit the material allegations of fact set forth in *Paragraph 9* of the complaint, but deny the conclusions of law set forth therein. In this connection defendants allege that up until January 28, 1948, the date of the application involved here, only one qualified negro, Ada Lois Sipuel, had applied for and been denied admission

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 34

G. W. McLAURIN, APPELLANT,

vs.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION,
BOARD OF REGENTS OF UNIVERSITY OF OKLAHOMA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

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to the University of Oklahoma, and that there has been no such applications filed with said University since said date.

14. Defendants admit the material allegations of fact relating to the defendants, Board of Regents of the University of Oklahoma, George L. Cross, Lawrence H. Snyder [fol. 21] and J. E. Fellows, set forth in *Paragraph 10* of the complaint, and specifically allege that said defendants, on February 2, 1948, acted upon plaintiff's application of January 28, 1948 for admission to the University of Oklahoma by rejecting the same, as stated in *Paragraph 7* of the complaint. Defendants further allege that when an application, such as is involved here, has been refused or rejected by the proper authorities of the University, same, according to the rules and regulations of the University, is put in what is known as the "Inactive File" and is not further considered by said authorities unless and until the applicant, either in writing or orally, requests them to reactivate the same, at which time, before the application will be reactivated and again considered by said authorities, the applicant is required to furnish a statement as to whether or not he has attended any institution of higher education since he filed said application, and if so, to furnish a transcript of his grades and standing thereat, and in this connection defendants allege that, although said rules and regulations were by said authorities on January 28, 1948 called to the attention of plaintiff, no such request has been made by plaintiff since his said application was rejected on February 2, 1948.

Defendants admit the material allegations of fact relating to the defendant, Oklahoma State Regents for Higher Education, set forth in the last two sentences of said *Paragraph 10*, to-wit: that plaintiff appealed to said regents "to be afforded an opportunity to take the required courses in an institution of higher learning within the State of Oklahoma" and that said appeal has not been granted, and in this connection allege that the position of said regents in the premises, as stated thereby in a letter to the Attorney General of Oklahoma, dated August 17, 1948, is as follows:

[fol. 22] "On or about January 28, 1948, the Oklahoma State Regents for Higher Education received notice of the January 28, 1948 application of the above

plaintiff [G. W. McLaurin], a negro, as well as notice of the applications of five other negroes of said date, to attend certain graduate courses of instruction at the University of Oklahoma for the semester beginning January 29, 1948. While said courses of instruction are not given at Langston University (the only institution of higher education in Oklahoma for negroes), said Regents, by reason of the fact that they did not then, nor since, have sufficient appropriations to establish said courses of instruction, nor any other course of instruction now given at the University of Oklahoma but not given at Langston University, have not established, nor begun to establish, at or in connection with Langston University, courses of instruction such as are above referred to. In this connection said Regents cannot establish such courses of instruction at or in connection with Langston University, unless and until they receive a sufficient appropriation from our State Legislature to establish such courses of instruction 'substantially equal' to like courses of instruction at the University of Oklahoma."

15. Defendants admit the material, but not the speculative, allegations of fact set forth in *Paragraph 11* of the complaint, but deny that the "order, policy, custom and usage," referred to therein, deprives plaintiff of rights guaranteed by the Constitution of the United States.

16. Defendants admit the material allegations of fact set forth in *Paragraph 12* of the complaint.

17. Defendants admit the material allegations of fact, if any, set forth in *Paragraph 13* of the complaint, but deny the conclusions of law set forth therein.

18. Defendants admit the material allegations of fact, if any, set forth in *Paragraph 14* of the complaint, but deny the conclusions of law set forth therein.

19. Defendants admit the material allegations of fact set forth in *Paragraph 15* of the complaint, except the allegation set forth in the last sentence of said paragraph. Defendants allege that the "next regular term of the graduate school of the University of Oklahoma," referred

to in said paragraph, will begin on Monday, September 20, 1948.

[fol. 23] 20. Defendants deny the conclusions of law set forth in *Paragraph 16* of the complaint.

21. Defendants deny the material allegations of fact set forth in *Paragraph 17* of the complaint.

22. Defendants deny the material allegations of fact, if any, and the conclusions of law set forth in *Paragraph 18* of the complaint.

23. Defendants admit the material allegations of fact, but not the conclusions of law, set forth in *Paragraph 19* of the complaint.

24. Defendants allege and admit that on January 28, 1948, the last day of the regular registration period for the semester of the University of Oklahoma beginning January 29, 1948 and ending May 28, 1948 (same being the "second semester of the 1947-48 school term" of said University referred to in Paragraph 7 of the complaint), the plaintiff, G. W. McLaurin, a negro, who was then and there qualified, except as to race and color, to take a graduate course in the field of education leading to a doctorate degree in Oklahoma University same being a state-supported institution for higher education, duly applied for admission (subject to the exception as to "tentative admission" referred to in Paragraph 7 hereof) to said University to take said course of instruction, and that on February 2, 1948, plaintiff's said application was rejected by the proper authorities of the University of Oklahoma solely on the ground of his race and color.

25. Defendants allege and admit that the University of Oklahoma "is the only school maintained and operated by the state which offers a doctorate degree" in education, as stated in Paragraph 6 of the complaint, but allege that plaintiff's application to take said course of instruction was the first and only such application ever made by a negro, either at the enrollment period of said "second [fol. 24] semester of the 1947-48 school term" or at the enrollment period of any other semester of said University, and that plaintiff's said application was not made until the day before said course of instruction for said second semester began.

State of Oklahoma and are resident and domiciled in said state.

3. The plaintiff is a Negro, is over eighteen years of age and holds a Masters Degree from the University of Kansas at Lawrence, Kansas, a duly accredited college; that he is of good moral character and has in all particulars met the qualifications necessary for admission to the graduate school of the University of Oklahoma in the field of education which fact the defendants have admitted; that he is ready, willing and able to pay all lawful charges and tuition requisite to his admission, and he at all times material herein was and is willing and able to comply with all lawful rules and regulations requisite to his admission therein.

4. This is a class action authorized by rule 23A of the Rules of Civil Procedure of the District Courts of the United States. The rights involved are of common and general interest to the members of the class represented by the plaintiff, namely, Negro citizens of the United States and residents of the State of Oklahoma similarly situated who are duly qualified for admission to the University of Oklahoma and who are denied admission solely because of race or color. The members of the class are so numerous [fol. 3] as to make it impracticable to bring them all before the court and for this reason plaintiff prosecutes this action in his own behalf and on behalf of the class without specifically naming said members herein.

5. The defendant, Oklahoma State Regents for Higher Education is a state board created by Article 13A of the Constitution of Oklahoma as a "coordinating board of control for all state institutions" for higher education; the defendant, Board of Regents of the University of Oklahoma, is an administrative board and agency of the State of Oklahoma and exercises over-all authority with reference to the regulation of instruction and admission of students in the University and is an agency of the state operating as a part of the educational system of the state and maintained by appropriations from the public funds of the state raised by taxations from the citizens and taxpayers of the State of Oklahoma; the defendant, George L. Cross, is the duly appointed, qualified, and acting President of the said University and as such is subject to the authority of the said Board of Regents as an immediate agent governing

26. Defendants allege that if in a state, such as Oklahoma, having laws (70 O. S. 1941 §§ 455, 456 and 457, abstracted in Paragraph 12 of the complaint) requiring segregation of the white and negro races in education, there is a state agency which is under the mandatory duty to furnish separate educational facilities for qualified negroes substantially equal to those furnished whites when the need therefor by qualified negroes is brought to its attention, the equal protection clause of the Fourteenth Amendment of the Constitution of the United States is not violated if during a period of time reasonably necessary to establish such facilities the proper authorities of the educational institution for the whites decline to admit applying qualified negroes thereto.

27. Defendants allege that the Oklahoma State Regents for Higher Education, as held by the Supreme Court of Oklahoma in its opinion in the two Sipuel cases (180 Pac. 2d. 135 and 190 Pac. 2d. 437), have such a mandatory duty.

28. Defendants allege that, as shown in the latter part of Paragraph 14 hereof, the defendant, Oklahoma State Regents for Higher Education, will not be able to establish a "substantially equal" course of instruction at or in connection with Langston University to that involved here, that is, until they receive a sufficient appropriation from our state legislature to establish the same, and since said legislature will not convene until January 4, 1948, unless convened in a prior special session by the Governor, at which time it must be presumed the legislature will make such an appropriation and thereby enable the regents to carry out their said mandatory duty, defendants allege that the equal protection clause of the Fourteenth Amendment [fols. 25-26] of the Constitution of the United States will not be violated if until the time the legislature will be able to make said appropriation and the regents to thereon perform their said mandatory duty, the proper authorities of the University of Oklahoma decline to admit applying qualified negroes thereto.

WHEREFORE, premises considered, defendants respectfully ask the court to deny plaintiff the relief prayed for in

and controlling the several colleges and schools of the said University; the defendant, Lawrence H. Snyder, is the Dean of the Graduate College of said University whose duty comprises the governing of the said department, including the admission and acceptance of applicants eligible to enroll as students therein, including your plaintiff, the defendant, J. E. Fellows, is the Dean of Admissions and Records of the said University possessing authority to pass upon the eligibility of applicants who seek to enroll as students therein, including your plaintiff. All of the individual [fol. 4] defendants come under the authority, supervision, and control, and act pursuant to the orders and policies established by the defendant, Board of Regents of the University of Oklahoma; all of said individual defendants are being sued in their official capacity.

6. The University of Oklahoma is the only school maintained and operated by the State of Oklahoma which offers a doctorate degree in School Administration sought by the plaintiff; the plaintiff desires to be admitted not later than the next regular registration period and is ready and willing to pay the uniform requisite fees and conform to the lawful uniform rules and regulations for admission.

7. During the enrollment period of the second semester of the 1947-1948 school term, plaintiff duly applied for admission to the said University for the purpose of taking such courses offered at said University as would entitle him to a doctorate degree in School Administration and at the time of his application he was possessed and still possesses all of the scholastic, moral and other lawful qualifications prescribed by the constitution and statutes of the State of Oklahoma, by the defendants, and each of them, and by the rules and regulations of the said University; that he was then and still is ready and willing to pay all lawful, uniform fees and charges and to conform to all lawful, uniform rules and regulations established by lawful authorities for admission to the said school; that the plaintiff's application has been arbitrarily and illegally rejected pursuant to a policy, custom and usage of denying to qualified Negro applicants the equal protection of the laws solely on the ground of race and color.

8. The plaintiff further states that on the 2nd day of February, 1948, after having complied with all of the rules

the complaint, and that the costs of this action be taxed to plaintiff.

• Mac Q. Williamson, Attorney General; Fred Hansen, First Assistant Attorney General; George T. Montgomery, Assistant Attorney General, Attorneys for Defendants.

Duly sworn to by George L. Cross. Jurat omitted in printing.

[fol. 27] IN UNITED STATES DISTRICT COURT,
PROCEEDINGS OF AUGUST 23, 1948.

BEFORE JUDGES MURRAH, VAUGHT AND BROADBENT

On this 23rd day of August, 1948, the parties appear in person and by their respective counsel and this cause comes on for hearing on the application of plaintiff for preliminary injunction. Counsel for the defendants raise the question of service, waives insufficiency thereof, and enters appearance on behalf of each of the defendants. The plaintiff asks and is granted leave to dismiss Paragraph 17 of complaint and Paragraph 8 of the prayer thereof, and to waive all claim for damages herein. The defendants are granted leave to file their answer instantler. Counsel for the plaintiff and the defendants make opening statements of fact and state their respective contentions. The defendants announce that they will stand on their answer and the stipulation of facts, and rest. Counsel for the plaintiff and defendant present their arguments on the law and said cause is submitted to the court for determination. Thereupon, ruling on said motion for preliminary injunction is taken under advisement and said cause is assigned for hearing on its merits and for final determination on Friday, September 24, 1948, at 10:00 A. M.

[fol. 28] IN THE DISTRICT COURT OF THE UNITED STATES,
WESTERN DISTRICT OF OKLAHOMA
[Title omitted]

AGREED STATEMENT OF FACTS—Filed Aug. 23, 1948

It is hereby stipulated and agreed by and between the plaintiff and the defendants, through their respective counsel, as follows:

and regulations governing the admission of students to the said department of the said University and even though he admittedly possessed all of the qualifications entitling him [fol. 5] to be admitted, his application for admission was refused and denied solely on the ground of his race and color, in violation of the Constitution and laws of the United States.

9. The defendants acting pursuant to the statutes of the State of Oklahoma have established and are maintaining an order, policy, custom and usage of denying to qualified Negro applicants the equal protection of the laws guaranteed by the Constitution of the United States by refusing to admit qualified Negroes solely because of race or color to all courses of study at the University of Oklahoma including those courses of study available only at the University of Oklahoma, such as the courses desired by the plaintiff.

10. The defendants, George L. Cross, Lawrence H. Snyder and J. E. Fellows, refuse to act favorably upon plaintiff's application and although admitting that plaintiff possesses all the qualifications necessary for admission to the said graduate school, refused and will continue to refuse to admit him on the grounds that the defendant, Board of Regents of the University of Oklahoma, has established a policy that Negro qualified applicants are not eligible for admission to the said graduate school of the University of Oklahoma solely because of race or color, even though the state has furnished no other facility or opportunity for the plaintiff. The plaintiff appealed directly to the Board of Regents of the University of Oklahoma for admission to the said graduate school and such board has, so far, refused to act in the premises and to admit plaintiff or other qualified Negroes solely because of race or color. Subsequent thereto, plaintiff appealed to the defendant, the Oklahoma State Regents for Higher Education, to be afforded [fol. 6] an opportunity to take the required courses at an institution of higher learning within the State of Oklahoma. This appeal has likewise been refused.

11. Plaintiff is informed and believes and therefore avers that but for the Oklahoma statutes set out in the following paragraph, defendants would not have established and would not be maintaining the order, policy, custom and usage of excluding qualified applicants from attending the University of Oklahoma to take courses offered only at

1.

That the plaintiff is a resident and citizen of the United States, the State of Oklahoma, Oklahoma County and Oklahoma City, and desires to take a graduate course in Education leading to the Doctors degree.

2.

That Oklahoma University is a part of the educational system of the State of Oklahoma maintained by the taxpayers of the state from funds derived from taxation placed upon all of the taxpayers; that it is the only institution in the state supported by taxation in which the plaintiff can pursue a graduate course in Education leading to the Doctors degree.

3.

That during the enrollment period of the second semester of the 1947-1948 school term, he duly applied for admission to the said university for the purpose of taking such course [fol. 29] as would entitle him to a Doctors degree in Education, and at the time of his application he was possessed and still possesses all of the scholastic and moral qualifications prescribed by the rules and regulations of the university entitling him to be admitted, except for the fact that he is a member of the Negro race.

4.

That he has complied with all of the rules and regulations of the said university entitling him to "tentative admission" to the graduate school of the university in the field of education, and, upon the furnishing of certain transcripts of credits, to unqualified admission thereto, and is willing and able to pay all lawful, uniform fees and charges of the university.

5.

That the defendant, the Board of Regents of the University of Oklahoma, is an administrative agency of the state and exercises over-all authority with reference to the regulation and instruction and admission of students to the university. It is an agency of the state operating as a part of the educational system of the state and is maintained by appropriations from public funds raised by taxation from the citizens and taxpayers of the state.

that institution. The plaintiff is informed and believes and therefore avers that but for the Oklahoma statutes set out in the following paragraph the defendants would not continue to deprive the plaintiff of his rights guaranteed by the Constitution of the United States as set out more fully below.

12. The defendant, Board of Regents, have established and are maintaining the order, policy, custom and usage of excluding all qualified Negroes solely because of race and color from all schools, colleges, and divisions of the University of Oklahoma including the Graduate School of the University of Oklahoma pursuant to sections 455, 456 and 457 of Title 70 of the Oklahoma statutes (1941) which statutes provide in part as follows:

That 70 O.S. 1941, Section 455 makes it a misdemeanor, punishable by a fine of not less than \$100.00 nor more than \$500.00, for

"any person, corporation or association of persons to maintain or operate any college, school or institution of this State where persons of both white and colored races are received as pupils for instruction,"

and provides that each day same is so maintained or operated "shall be deemed a separate offense."

[fol. 7] That 70 O.S. 1941, Section 456, makes it a misdemeanor, punishable by a fine of not less than \$10.00 or more than \$50.00 for any instructor to teach

"in any school, college or institution where members of the white race and colored race are received and enrolled as pupils for instruction,"

and provides that each day such an instructor shall continue to so teach "shall be considered a separate offense."

That 70 O.S. 1941; section 457, makes it a misdemeanor, punishable by a fine of not less than \$5.00 nor more than \$20.00, for

"any white person to attend any school, college or institution, where colored persons are received as pupils for instruction,"

and provides that each day such a person so attends "shall be deemed a distinct and separate offense."

13. Plaintiff, and other qualified Negroes, are excluded from the University of Oklahoma solely because of race

6.

That on the 28th day of January, 1948, same being the last day of the enrollment period for the semester beginning January 29, 1948, after having complied in the manner set forth in Paragraph 4 hereof with the rules and regulations of the university, he applied for admission to the said school and on the 2nd day of February, 1948, his application was denied solely on the grounds of his race and color.

7.

[fols. 30-31] That the failure of plaintiff to request reactivation of his January 28, 1948 application at or prior to the beginning of the 1948 summer term of the University of Oklahoma, will not prevent him from having said application reactivated, by complying with the applicable rules and regulations of the university, during the enrollment period for the fall term of the University beginning September 20, 1948.

8.

That if the plaintiff, being otherwise qualified for admission to the said university, applies during the enrollment period for admission to the fall term of the university, defendants, pursuant to the statutes set out in Paragraph 11 of plaintiff's complaint, that is, if said statutes have not then been repealed or modified, would deny his application solely because of his race and color.

Amos T. Hall, Attorney for Plaintiff. Mac Q. Williamson, Attorney General of Oklahoma; Fred Hansen, First Assistant Attorney General; George T. Montgomery, Assistant Attorney General, Attorneys for Defendants.

[fol. 32] IN UNITED STATES DISTRICT COURT

ORDER REASSIGNING CASE—Sept. 21, 1948

Before Judges Murrah, Vaughn & Broadus

On this 21st day of September, 1948, it is ordered by the Court that this cause be re-assigned for trial on merits and for final determination from Friday, September 24, 1948 to Wednesday, September 29, 1948, at 10:00 A. M.

[fol. 33]

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. 4039 (Civil)

G. W. McLAURIN, Plaintiff

VS.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION, et al.,
Defendants.

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS

Before:

THE HONORABLE ALFRED P. MURRAH,
Judge of the United States Court of Appeals;

THE HONORABLE EDGAR S. VAUGHT,
United States District Judge for the Western
District of Oklahoma;

THE HONORABLE BOWER BROADUS,
United States District Judge for the Northern,
Eastern and Western Districts of Oklahoma.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

In the United States Court House and Post
Office Building, Oklahoma City, Oklahoma;
September 29, 1948.

APPEARANCES:

For the Plaintiff:

AMOS T. HALL,
107½ North Greenwood,
Tulsa, Oklahoma.

THURGOOD MARSHALL,
20 West 40th Street,
New York, New York.

[fol. 34]

For the Defendant:

HONORABLE MAC Q. WILLIAMSON,
Attorney General, State of Oklahoma,
 State Capitol Building,
 Oklahoma City, Oklahoma.

[fol. 35]

PROCEEDINGS

September 29, 1948

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Williamson: May it please your Honors, I desire at this time to offer for the record a carbon original of a letter—I believe that this is a copy, an exact copy, a signed copy of a four-page letter, which was written by the Governor of this State, Honorable Roy J. Turner, directed to the three judges here by name, and which endeavors to reflect the views and policy of the Head of the government of this State with regard to the litigation at hand, and with regard to what conceivably ought to be done about it by the State.

I took the liberty to ask the Governor to write the letter, thinking that it was not inappropriate that this Court might have word from the Chief Executive of a sovereign state as to the policy, as to how the State felt, its responsible heads felt, about the issue; and for that reason the letter was written and has been delivered by mail to each of the gentlemen composing this three-judge court.

Now, because we deem the letter of sufficient relevancy to challenge at least the passing attention of the Court, I now move that it be admitted in the record as part of the record in this case, and I'd like to offer it to the Clerk for identification as Defendant's Exhibit 1.

(The letter from the Governor was identified by the [fol. 36] Court Clerk as Defendant's Exhibit 1.)

Judge Murrah: The Court understands that counsel for the plaintiff has seen the proffered exhibit. What do you say?

Mr. Marshall: We were given a copy of the exhibit and we do not object to the authenticity or any of the technical objections to the letter, but we, of course, reserve the right as to its relevancy in this particular matter.

Judge Murrah: And you do object to its admission on the grounds of irrelevancy?

•their agents, and employees from excluding the plaintiff and others on whose behalf he sues from admission to courses offered only at the graduate schools of the University of Oklahoma solely because of race and color.

3. That this Court issue a preliminary or interlocutory injunction restraining the defendants and each of them, their agents, and employees from enforcing and maintaining the order, policy, custom and usage adopted pursuant to sections 455, 456 and 457 of the Oklahoma Statutes of 1941 whereby the plaintiff and other qualified Negro applicants are excluded from admission to courses offered only at the graduate schools of the University of Oklahoma solely because of race and color.

4. That this Court issue a preliminary or interlocutory injunction restraining the defendants and each of them, their agents, and employees from all action pursuant to sections 455, 456 and 457 of the Oklahoma Statutes of 1941 which preclude the admission of the plaintiff and other qualified Negroes to courses offered only at the graduate schools of the University of Oklahoma solely because of race and color on the grounds that said statutes as applied to this plaintiff and others on whose behalf he sues denies to them the rights guaranteed by the equal protection and due process clauses of the Fourteenth Amendment, the liberty guaranteed by the Fourteenth Amendment to the United States Constitution and sections 41 and 43 of Title 8 of the United States Code.

[fol. 11] 5. That this Court issue a permanent injunction restraining the defendants and each of them, their agents, and employees from excluding the plaintiff and others on whose behalf he sues from admission to courses offered only at the graduate schools of the University of Oklahoma solely because of race and color.

6. That this Court issue a permanent injunction restraining the defendants and each of them, their agents, and employees from enforcing and maintaining the order, policy, custom and usage adopted pursuant to sections 455, 456 and 457 of the Oklahoma Statutes of 1941 whereby the plaintiff and other qualified Negro applicants are excluded from admission to courses offered only at the graduate

Mr. Marshall: Only on the grounds of its relevancy, as I said.

Judge Murrah: That is very fair. It will be admitted and made a part of the record in this case.

(Defendant's Exhibit 1 was received in evidence.)

Mr. Williamson: Now if it please the Court, one other matter—two other matters—that I would like to call to the attention of the Court: One of them was a statement which I made in the first hearing in this matter to the effect that I was not entirely sure that I had formal authority to represent the Regents for Higher Education, as well as the Board of Regents of Oklahoma University. The Court will remember, no doubt, that I made the observation that the service was far from complete in my humble judgment and, notwithstanding that, the case proceeded, and I assumed the duty and burden of obtaining from each Board a resolution, and I now wish to state for the record that each of those constitutional State boards has by resolution duly entered in the respective minutes authorized the Attorney General to be here and speak for them and represent them, though not individually.

Judge Murrah: Enter the appearance for the Board.

Mr. Williamson: Indeed.

Judge Murrah: For each Board.

Mr. Williamson: Yes, sir.

Judge Murrah: And to represent them in this Court.

Mr. Williamson: So that we understand the Boards are here properly. Now, one other matter that I would like to call to the attention of the Court: There was some discussion in the other hearing about the precise quality of the record, that is, the scholastic record of the plaintiff here, McLaurin. The Court will recall there were certain details that needed to be supplied, details as to the character of work he had received, and of that nature. The Court will recall there was some colloquy back and forth across the table and it was agreed that those matters that were not in order would be furnished. I now desire to state for the record that since the adjournment of the former hearing, plaintiff McLaurin has supplied the needed and necessary detail in order to round out his application for admission to the School of Education, leading to a doctorate [fol. 38] in that School, so that the record may show our admission that his credentials have been put in order.

schools of the University of Oklahoma solely because of race and color.

7. That this Court issue a permanent injunction restraining the defendants and each of them, their agents, and employees from all action pursuant to sections 455, 456 and 457 of the Oklahoma Statutes of 1941 which preclude the admission of the plaintiff and other qualified Negroes to courses offered only at the graduate schools of the University of Oklahoma solely because of race and color on the grounds that said statutes as applied to this plaintiff and others on whose behalf he sues denies to them the rights guaranteed by the equal protection and due process clauses of the Fourteenth Amendment, the liberty guaranteed by the Fourteenth Amendment to the United States Constitution and sections 41 and 43 of Title 8 of the United States Code.

8. That the plaintiff have judgment for Five Thousand (\$5000.00) Dollars damages.

[fols. 12-13] 9. That this Court will allow such costs herein, and such further, other additional or alternative relief as may appear to the Court to be just and equitable in the premises.

Amos T. Hall, 107¹/₂ N. Greenwood Avenue, Tulsa, Oklahoma; Thurgood Marshall, 20 West 40th Street, New York, Attorneys for Plaintiff.

Duly sworn to by G. W. McLaurin. Jurat omitted in printing.

Judge Murrah: Any further statement?

Mr. Hall: That's all.

Mr. Marshall: No, sir, that's all.

Judge Murrah: May the case close?

Mr. Williamson: The case may close.

RULING OF THE COURT

Judge Murrah: The Court adopts the stipulation in this case as the facts, and so finds.

Based upon those facts, the Court holds that the plaintiff in this case is entitled to secure legal education.

Mr. Williamson: I don't believe it is legal education.

Judge Murrah: Doctors education—I beg pardon—entitled to secure postgraduate education in this State by a state institution. The Court further holds that to this time he has been denied that right, although application has been duly made therefor during the same period these particular educational facilities have been afforded by the State to other groups.

The Court further holds that the State is under the constitutional duty to provide this plaintiff with the education he seeks as soon as it does for applicants of any other group. That is the settled law, made applicable and apposite to this case.

[fol. 39] The Court further holds that in so far as the statutes of the State of Oklahoma drawn in issue here deny or deprive this plaintiff of admission to the University of Oklahoma for the purpose of pursuing the course he seeks to pursue there, are unconstitutional and void. Now that does not mean, of course, that these laws cannot be made to stand, with the power of the State to provide equal segregated facilities, provided that those facilities are equal and that they are afforded as soon as they are afforded to any other group.

Now our attention has been called, and we have seen a statement of the Governor of this State, in which he commits the State to a certain course of action designed to afford, to comply, with the constitutional mandate. In that connection, we think it appropriate for the Court to state that it is not our function to say what the State shall do in order to comply with its acknowledged responsibility to its citizens. Rather, it is our function to say whether what has been done or is being done meets the constitutional mandate.

In the performance of this important function, we sit as a court of equity with power to fashion our decree in accordance with right and justice under the law. Accordingly we refrain at this time from issuing or granting injunctive relief on the assumption that the State will follow the law in the constitutional mandate.

[fol. 40] We retain jurisdiction of this case, however, with full power to issue such further orders and decrees as may be deemed necessary and proper to secure this plaintiff the equal protection of the laws, which, translated into terms of this lawsuit, means equal facilities—excuse me—equal educational facilities.

We therefore recess this case at this time, with the understanding that either party may apply for further relief consistently with the pleadings in the case.

Anything further? You understand, gentlemen? That will be the judgment of this Court.

Mr. Williamson: I would like to request of the Reporter to transcribe a copy as soon as convenient.

Judge Murrah: We will prepare a formal judgment and decree in accordance with this forthwith, or within the next few days, but that is the judgment of this Court, and judgment entered as of this date.

Any comment, anything further?

Mr. Williamson: No, sir.

Mr. Marshall: That's all.

(Whereupon, the proceedings in the above-styled cause were adjourned.)

CHARGES:

Plaintiff billed \$6.40

Defendant billed \$6.40

(Daily copy rate)

[fol. 41] DEFENDANT'S EXHIBIT 1

MAC Q. WILLIAMSON

Attorney General

State of Oklahoma

Office of the Attorney General, Oklahoma City

September 28, 1948

Honorable Edgar S. Vaught
United States District Judge
Federal Building
Oklahoma City, Oklahoma

RE: McLaurin v. Oklahoma State Board
of Higher Education, et al.,
No. 4329, U. S. District Court for
the Western District of Oklahoma

My dear sir:

Since our conference with the three members of the Court and opposing counsel, had in chambers at the conclusion of the formal presentation of argument herein on August 23rd and in view of comment there made, I have conceived the idea that it would not be inappropriate for the Court (as well as for all concerned) to have from the Governor of the State of Oklahoma a narrative statement as to his official views and policy in this controversy, which is fraught with such wide-spread interest in and to the State and its people.

Hence, I have taken the liberty to request, and the Governor has prepared, such a statement; and I am herewith enclosing three signed copies of same, for the respective members of the Court, and would thank you to pass copies on to the other judges, retaining one for yourself.

Inasmuch as the Court re-convenes on Wednesday morning, September 29th (which is now a matter of hours), I am retaining in my files and will at Wednesday's session personally present copies thereof to opposing counsel.

Very respectfully, Mac Q. Williamson, Attorney
General of Oklahoma.

MQW:LW

[fol. 42]

ROY J. TURNER
Governor

State of Oklahoma
Office of the Governor
Oklahoma City
September 27, 1948

Honorable A. P. Murrah, Judge,
U. S. Circuit Court of Appeals,
Oklahoma City, Oklahoma.
Honorable Edgar S. Vaught, Judge,
U. S. District Court for the Western District,
Oklahoma City, Oklahoma.

Honorable Brower Broadus, Judge,
U. S. District Court for the Western District,
Oklahoma City, Oklahoma.

In re: McLaurin vs. Oklahoma State Board
of Higher Education, et al., No.
4239, U. S. District Court for the
Western District of Oklahoma.

Gentlemen:

The Attorney General of the State of Oklahoma has requested that I, as the Governor of the State, present in writing my views of the State's policy with reference to the above case now pending in your court. Pursuant thereto I am pleased to submit the following statement.

The State's position in the McLauren action was: That it was not aware of the desires of this plaintiff, or of any other person of African blood for instruction in the desired courses until January 28, 1948, and that it should have a reasonable time to provide such a course of study upon a separate but equal basis, or that it should have a reasonable time to amend its existing laws in such manner as to offer the desired courses in existing State institutions.

The State Statutes, of course, prevent the governing authorities from offering or permitting mixed classes, and also prevent faculty members from teaching mixed classes, and also prevent white students from attending a school or participating in a course of study where mixed classes are permitted. Neither the administrative officials, the [fol. 43] instructors, nor the students could have been expected to violate these express provisions of the Statutes.

From the statements made and the questions promulgated by this Court it is apparent that the State is faced with four alternatives:

(a) To do nothing about the matter and await the decision of this Court;

(b) To establish separate schools offering equal educational facilities to colored students;

(c) To discontinue those courses of study in schools of higher education for the white race that are not offered to members of the colored race;

(d) To convoke the Legislature in special session to amend the existing State Statutes in such manner that this plaintiff and members of the colored race may receive courses of study in schools of higher education where such

courses are desired but not offered in separate schools for the colored race.

The first alternative would have the effect of abrogating the segregation laws of the State of Oklahoma relating to higher education that have been in effect and have been a policy of this State since 1909. It would have a much more far reaching effect than is contemplated or required by the Constitution of the United States.

The second alternative would require approximately \$10,000,000 to provide such an educational institution, and it would require approximately \$500,000 per year to maintain. It would require years to complete. It is questionable whether or not it could be adequately staffed with colored instructors. When and if such an institution is completed and staffed, it would serve a mere handful of students. It is impractical, and is beyond the State's present financial ability.

The third alternative is a backward step that the State of Oklahoma cannot accept.

In my opinion, *the fourth alternative* is the answer to our problem. This is primarily a problem to be adjusted by the people and their duly authorized representatives. [fol. 44] When the present action was instituted on August 5, 1948, I hesitated to call a special session of the Legislature. We had just concluded a primary election which resulted in the selection of sixty-two new House members out of a total of one hundred fifteen, and the selection of nine new Senate members out of a total of twenty-two. Thus, out of a total of 137 legislative seats to be filled, the July primaries actually furnished seventy-one new members of the Legislature. I feel that the people are entitled to adjust the problem through their newly chosen representatives. The general election may result in further changes. It will be held on November 2, 1948. The newly elected members of the Legislature may qualify fifteen days later. On or after November 18, 1948, the Legislature could be summoned into special session if the exigencies of the situation demand such action.

Let me point out, however, that the legislative body should be entitled to a few days notice of such special session. It would require a few days to organize itself properly. Its deliberations and actions would be interrupted and impaired by the intervening Thanksgiving,

Christmas and New Year's holidays. I know that if the State is allowed to pursue the *fourth alternative above*, that this plaintiff, as well as other members of his class, are entitled to immediate action; but, as a matter of fact, if the matter is deferred until November 18, this plaintiff will secure no greater benefit that he would secure by awaiting the general session of the Legislature. The second semester in Oklahoma schools of higher education commences on January 31, 1948. Enrollments are permitted until February 23, 1949. A special session of the Legislature during the month of November, and the amendment of the State Statutes would offer him instruction in the desired courses at the second semester. The general session of the Legislature, beginning January 4, 1949, will accomplish the same purpose. I know of no other State problem that requires a special session of the Legislature. The large sum of money that must be expended in a special session might just as well be expended in furnishing the type of education required.

Proposed amendments to our existing Statutes have been prepared and are now being discussed and studied. I have personally discussed the changes with many leaders of the Legislature, and have been assured that the problem will receive favorable consideration in the shortest possible time. If the matter can be thus deferred, I will include a request for the necessary statutory changes or amendments in my message to the Legislature, and request that [fols. 45-46] it be given priority over other pending legislation.

Not being learned in the law, I freely admit that my thoughts in the matter are controlled by the social and practical aspects thereof. Yet I believe that these matters should also be taken into consideration by the Court, and I hope that this Court can properly hold the matter in abeyance until the people's representatives have an opportunity to consider the matter at the regular session of the Legislature beginning January 4, 1949.

As before stated, it is my belief that the interests of the State will be better served by a consideration of this problem at the general session of the Legislature. I further believe that the plaintiff will lose no school time from the action taken at the general session rather than action taken at a special session held on November 18, 1948.

However, let me repeat, if the exigencies of the situation demand action during this intervening six weeks' period, I will call a special session to deal with the problem.

Yours very truly, Roy J. Turner, Governor of the
State of Oklahoma.

[fol. 47]

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. 4039 (CIVIL)

G. W. McLaurin, Plaintiff,

vs.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION, et al,
Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW—

Filed Oct. 6, 1948

PRELIMINARY STATEMENT

By this suit, we are asked to enjoin the defendants from refusing to admit the plaintiff to the University of Oklahoma, for the purpose of pursuing a postgraduate course in education leading toward a doctor's degree. It is said that although having made timely application for admission, and being morally and scholastically qualified, he has been denied admission solely because, as a member of the Negro [fol. 48] Race, the laws of Oklahoma forbid his admission under criminal penalty. It is said that in these circumstances, refusal to admit the plaintiff to the University of Oklahoma, for the purpose of pursuing the course of study he seeks, is a deprivation of his rights to the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

FINDINGS OF FACT

I

In accordance with the stipulation, the court finds that the University of Oklahoma is an educational institution

maintained by the taxpayers of the State, from funds derived from uniform taxation, and that it is the only educational institution supported by public taxation in which the plaintiff can pursue a postgraduate course leading to a doctor's degree in education.

II

That during the enrollment period for the second semester for the 1947-1948 school term, plaintiff applied for admission to the University for the purpose of taking such courses which would entitle him to a doctor's [fol. 49] degree in education, and that at the time of his application, he possessed and still possesses all of the scholastic and moral qualifications prescribed by the University of Oklahoma for admission to the courses he seeks to pursue, and that he was denied admission to the University on February 2, 1948, solely because as a member of the Negro Race, the applicable laws of Oklahoma (70 O. S. 1941, Sections 455, 456 and 457) make it a criminal offense for any person to operate a school or college or any educational institution where persons of both white and colored races are received as pupils for instruction, or for any instructors to teach in, or any white person to attend, any such school.

CONCLUSIONS OF LAW

I

This suit arises under the Constitution and laws of the United States, and seeks redress for the deprivation of civil rights guaranteed by the Fourteenth Amendment. The court is therefore vested with jurisdiction, regardless of diversity of citizenship or amount in controversy. *Hague* [fol. 50] v. C. I. O., 307 U. S. 496, 514; *Douglas v. Jeannette*, 319 U. S. 157. Since a temporary injunction against the enforcement of the State laws on the grounds of their unconstitutionality is sought, the subject matter is properly cognizable by a three judge court under Section 266 of the Judicial Code, 28 U. S. C. A. 380.

II

We hold, in conformity with the equal protection clause of the Fourteenth Amendment, that the plaintiff is entitled to secure a postgraduate course of study in education leading to a doctor's degree in this State in a State institution,

and that he is entitled to secure it as soon as it is afforded to any other applicant. *Sipuel v. Board of Regents*, 332 U. S. 631; *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337. That such educational facilities are now being offered to and received by other applicants at the University of Oklahoma, and that although timely and appropriate application has been made therefor, to this time such facilities have been denied this plaintiff.

III

The court is of the opinion that insofar as any statute or [fol. 51] law of the State of Oklahoma denies or deprives this plaintiff admission to the University of Oklahoma for the purpose of pursuing the course of study he seeks, it is unconstitutional and unenforceable. This does not mean, however, that the segregation laws of Oklahoma are incapable of constitutional enforcement. We simply hold that, insofar as they are sought to be enforced in this particular case, they are inoperative.

IV

Our attention has been called to and we have seen a statement of the Governor of this State in which he commits the State to a certain course of action, designed to afford equal segregated facilities to this plaintiff and members of his Race in compliance with the constitutional requirements. In that connection, we think it appropriate to state that it is not our function to say what the State shall do in order to comply with its acknowledged responsibilities to its citizens. Rather it is our function to determine whether what has been done and what is being done meets the constitutional mandate.

V

[fols. 52-53] In the performance of this important function, we sit as a court of equity, with power to fashion our decree in accordance with right and justice under the law. Accordingly, we refrain at this time from issuing or granting any injunctive relief, on the assumption that the law having been declared, the State will comply. We retain jurisdiction of this case, however, with full power to issue such further orders and decrees as may be deemed necessary and proper to secure to this plaintiff the equal protection of the laws.

which, translated into terms of this lawsuit, means equal educational facilities.

Alfred P. Murrah, Judge of the U. S. Court of Appeals. Edgar S. Vaught, U. S. District Judge. Bower Broadbush, U. S. District Judge.

[fol. 54]

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. 4039 (CIVIL).

G. W. McLAURIN, Plaintiff,

vs.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION, et al.
Defendants.

JOURNAL ENTRY OF JUDGMENT—Oct. 6, 1948

Be it remembered that this cause came on regularly for hearing before this duly constituted court on August 23, 1948. The plaintiff appeared in person and by his attorneys Thurgood Marshall and Amos T. Hall. The defendants appeared either in person, or by and through the Honorable Mac Q. Williamson, Attorney General of the State of Oklahoma, Fred Hansen and George T. Montgomery, Assistant Attorneys General. Testimony was introduced, argument was had, and the matter was continued until September 24, 1948, and was thereafter continued until September 29, 1948. Further evidence was taken, argument heard, and the cause finally submitted.

[fols. 55-56] On this, the 6 day of October, 1948, it is ordered and decreed that insofar as Sections 455, 456 and 457, 70 O. S. 1941, are sought to be applied and enforced in this particular case, they are unconstitutional and unenforceable.

The court refrains at this time, however, from issuing or granting any injunctive relief, but jurisdiction over the subject matter is reserved for the purpose of entering any

such further orders as may be deemed proper in the circumstances to secure to the plaintiff the redress he seeks under the Constitution and laws of the United States.

Done this 6 day of October, 1948

Alfred P. Murrah, Judge of the U. S. Court of Appeals.
Edgar S. Vaught, U. S. District Judge.
Bower Broadbuss, U. S. District Judge.

[fol. 57]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION OF PLAINTIFF TO MODIFY ORDER
AND JUDGMENT—Filed October 8, 1948

Now comes the plaintiff, G. W. McLaurin, and moves this Honorable Court for further relief. In support of said motion, plaintiff alleges and states:

1. That on August 1, 1948, plaintiff filed a complaint in the above-entitled cause, requesting that this Court convene a three-judge court, as required by Section 266 of the Judicial Code then in effect, and further requesting that this Court issue both preliminary and permanent injunctions restraining defendant from excluding the plaintiff and others similarly situated from admission to courses of study offered by the state only at the graduate schools of the University of Oklahoma solely because of race or color, such complaint being predicated upon the assertion of the unconstitutionality of Sections 455, 456 and 457 of Title 70 of the Oklahoma Statutes of 1941.

2. That on August 23, 1948, the Honorable Alfred P. Murrah, Justice of the Circuit Court of Appeals for the Tenth Circuit, convened a three-judge court, consisting of the said Mr. Justice Murrah, the Honorable Edgar S. Vaught and the Honorable Bower Broadbuss of the United States District Court for the Western District of Oklahoma.

3. That on the 23 day of August, 1948, this matter came on before said three-judge court for a hearing, upon an agreed statement of facts; and that upon a further hearing held on the 29th day of September, 1948, the Honorable Mae Q. Williamson, Attorney General of the State of Oklahoma, stipulated that:

[fol. 58] "The record may show our admission that his (plaintiff's) credentials have been put in order." (Matter in parenthesis ours)

4. That the said agreed statement of facts adopted by this Court together with the stipulation made in the hearing on September 29, 1948, established that the plaintiff is a resident and citizen of the United States, State of Oklahoma, Oklahoma County and Oklahoma City;

That he was qualified for admission to the Graduate School for the purpose of taking courses in school administration leading to the degree of Doctor of Education;

That the University of Oklahoma is part of the educational system of the State of Oklahoma and is the only institution in the state supported by taxation in which the plaintiff could pursue such a graduate course in education leading to a Doctor's Degree;

That plaintiff had complied with all the rules and regulations and was willing and able to pay all lawful, uniform fees and charges;

That on the 28th day of January, 1948, plaintiff, having complied with all applicable rules and regulations of the University, had applied for admission to the said Graduate School of the University of Oklahoma;

That on the 2nd day of February, 1948, his application was denied solely on the grounds of race and color and that but for the Oklahoma statutes requiring segregation in educational institutions (Sections 455, 456, and 457 of Title 70 of the Oklahoma Statutes, 1948), defendants would not have established and would not be maintaining the order, policy, custom and usage of excluding qualified applicants, solely because of race or color, from attending the University of Oklahoma to take the courses offered at that institution.

5. That after hearing the argument of the parties and upon the pleadings and memoranda in support thereof, this Court, on the 29th day of September, 1948, held as follows:

"Based upon those facts, the court holds that the plaintiff in this case is entitled to secure . . . post-graduate education in this state by a state institution. The court further holds that to this time he has been denied that right although application has been duly made therefor (and) during the same period these particular educational facilities have been afforded by the state to other groups.

[fol. 59] "The court further holds that the state is under the constitutional duty to provide this plaintiff with the education he seeks as soon as it does for applicants of any other group . . . The court further holds that insofar as the statutes of the State of Oklahoma drawn in issue here deny or deprive this plaintiff of admission to the University of Oklahoma for the purpose of pursuing the course he seeks to pursue there, (they) are unconstitutional and void. . . .

"Accordingly, we refrain at this time from issuing or granting injunctive relief on the assumption that the state will follow the law in the constitutional mandate.

"We retain jurisdiction of this case, however, with full power to issue such further orders and decrees as may be deemed necessary and proper to secure this plaintiff the equal protection of the laws, which, translated in the terms of this law suit, means equal facilities—equal educational facilities.

"We therefore recess this case at this time with the understanding that either party may apply for further relief consistently with the pleadings in the case."
(Matter in parenthesis ours)

6. That pursuant to the holding of this Court in said judgment that the plaintiff was entitled to equal education as soon as such education is supplied to members of any other group, plaintiff herein; on the 5th day of October, 1948, made application to the Board of Regents, University of Oklahoma, an administrative board and agency of the State of Oklahoma, exercising over all authority with reference to the regulation of instruction and admission of students in the University and for admission to the graduate school of the University of Oklahoma for the purpose of taking courses in school administration leading towards a Doctor's degree in education.

7. That said defendant, acting together with and upon the instruction of the other defendants herein and each of them, refused and denied the plaintiff admission to such courses in the University of Oklahoma solely on account of his race or color.

8. That the only purpose for the institution of these proceedings in this Court by the plaintiff was to secure

for plaintiff the rights guaranteed to him by the Constitution and laws of the United States and particularly the equal protection clause of the Fourteenth Amendment thereof. Plaintiff, at the time of his application to the University, sought to secure graduate education in the field of education and a Doctor's degree in that field. Plaintiff, in renewing his application on the 5th day of October, 1948, again sought to secure an education leading [fol. 60] to a Doctor's degree at the only state-supported institution providing courses leading to such degree.

9. That white applicants for courses in school administration who applied at or about the time that the plaintiff applied in January 1948 were admitted and have completed one term of work.

10. That white applicants for such courses who applied for the Fall term 1948 have been admitted and entered upon such course of study on September 20, 1948.

11. That qualified white applicants who seek enrollment prior to October 13, 1948 will be admitted to such courses.

12. That on October 1, 1948 plaintiff requested the Board of Regents of the University of Oklahoma to reconsider its rejection of his application for admission in the light of this court's decision, but said defendants persisted in their refusal to admit plaintiff by failing to act upon such request.

13. That this Court has stated that plaintiff is entitled to receive an equal education "as soon as" such education is furnished to white students, and hence the refusal to admit plaintiff for two semesters is a substantial denial of his constitutional rights.

14. That plaintiff has no adequate remedy at law for the redress of this wrong and time is of the essence in securing a redress of such wrong.

WHEREFORE, plaintiff moves this Court to modify its order and judgment of September 29, 1948, and to enter an order requiring the defendants to admit the plaintiff to the Graduate School of the University of Oklahoma for the purpose of taking courses leading to a Doctor's degree in education, subject only to the same rules and regulations which apply to other students in said school.

Amos T. Hall, 107½ N. Greenwood Avenue, Tulsa, Oklahoma; Thurgood Marshall, 20 West 40th Street, New York, New York, Attorneys for Petitioner.

[fol. 61]

IN UNITED STATES DISTRICT COURT

PROCEEDINGS OF OCTOBER 25, 1948

Before Judges Murrah, Vaught & Broadus.

On this 25th day of October, 1948, the parties appear by their respective counsel, and this cause comes on for hearing on motion of plaintiff to modify order of September 29, 1948, motion of defendants to quash subpoenas duces tecum, and hearing on merits. Thereupon, pre-trial hearing is had, evidence heard, and exhibits introduced and facts stipulated; the application of Mauderie Hudson Wilson to intervene is heard, and all matters submitted to the Court for determination. Both parties are granted five days from this date to exchange briefs.

[fol. 62]

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. 4039 (CIVIL)

G. W. McLAURIN, Plaintiff,

vs.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION, et al.
Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Nov. 22, 1948

PRELIMINARY STATEMENT

At a former hearing of this cause, we held the segregation laws of the State of Oklahoma (70 O.S. 1941, Sections 455, 456 and 457) unconstitutional and inoperative insofar as they deprived the plaintiff of his constitutional right to

pursue the course of study he sought at the University of Oklahoma. We were careful, however, to confine our decree to the particular facts before us, while recognizing the power of the State to pursue its own social policies regarding segregation in conformity with the equal protection of the laws. We expressly refrained from granting injunctive relief, on the assumption that the State statutory impediments to equal educational facilities having been declared inoperative, the State would provide such facilities in obedience to the constitutional mandate.

Now this cause comes on for further consideration on [fol. 63] complaint of the plaintiff; to the effect that although he has been admitted to the University of Oklahoma, and to the course of study he sought, the segregated conditions under which he was admitted, and is required to pursue his course of study, continue to deprive him of equal educational facilities in conformity with the Fourteenth Amendment.

FINDINGS OF FACT

I

The undisputed evidence is that subsequent to our decree in this case, plaintiff was admitted to the University of Oklahoma, and to the same classes as those pursuing the same courses. He is required, however, to sit at a designated desk in or near a wide opening into the classroom. From this position, he is as near to the instructor as the majority of the other students in the classroom, and he can see and hear the instructor and the other students in the main classroom as well as any other student. His objection to these facilities is that to be thus segregated from the other students so interferes with his powers of concentration as to make study difficult, if not impossible, thereby depriving him of the equal educational facilities. He says in effect that only if he is permitted to choose his seat as any other student, can he have equal educational facilities.

II

He is accorded access to and use of the school library as other students, except if he remains in the library to study, he is required to take his books to a designated desk on the mezzanine floor. All other students who use the library may choose any available seat in the reading room in the library, but a majority find it necessary to study

elsewhere because of a lack of seating capacity in the library. The plaintiff says that this secluded and segregated arrangement tends to set him apart from other students and hence to deprive him of equal facilities.

[fol. 64].

III

He is admitted to the school cafeteria, where he is served the same food as other students, but at a different time and at a designated table. He does not object to the food, the dining facilities, or the hour served; but to the segregated conditions under which he is served.

In the language of his counsel, he complains that "his required isolation from all other students, solely because of the accident of birth * * * creates a mental discomfiture, which makes concentration and study difficult, if not impossible * * *"; that the enforcement of these regulations places upon him "a badge of inferiority which affects his relationship, both to his fellow students, and to his professors."

CONCLUSIONS OF LAW

I

It is said that since the segregation laws have been declared inoperative, the University is without authority to require the plaintiff to attend classes under the segregated conditions. But the authority of the University to impose segregation is of concern to this court only if the exercise of that authority amounts to a deprivation of a federal right. See *Screws v. United States*, 325 U. S. 91.

The Constitution from which this court derives its jurisdiction does not authorize us to obliterate social or racial distinctions which the State has traditionally recognized as a basis for classification for purposes of education and other public ministrations. The Fourteenth Amendment does not abolish distinctions based upon race or color, nor was it intended to enforce social equality between classes and races. *Plessy v. Ferguson*, 163 U. S. 537; *Cummings v. United States*, 175 U. S. 528; *Gung Lum v. Rice*, 275 U. S. 78; *Missouri ex rel Gains v. Canada*, 305 U. S. 37. It is only when such distinctions are made the basis for discrimination and unequal treatment before the law that [fol. 65] the Fourteenth Amendment intervenes. *Traux v.*

Raich, 293 U. S. 33, 42. It is the duty of this court to honor the public policy of the State in matters relating to its internal social affairs quite as much as it is our duty to vindicate the supreme law of the land.

III

The Oklahoma statutes held unenforceable in the previous order of this court have not been stripped of their vitality to express the public policy of the State in respect to matters of social concern. The segregation condemned in *Westminster School District v. Mendez*, 161 F. 2d 774, was found to be "wholly inconsistent" with the public policy of the State of California, while in our case the segregation based upon racial distinctions is in accord with the deeply rooted social policy of the State of Oklahoma.

IV

The plaintiff is now being afforded the same educational facilities as other students at the University of Oklahoma. And, while conceivably the same facilities might be afforded under conditions so odious as to amount to a denial of equal protection of the law, we cannot find any justifiably legal basis for the mental discomfiture which the plaintiff says deprives him of equal educational facilities here. We conclude therefore that the classification, based upon racial distinctions, as recognized and enforced by the regulations of the University of Oklahoma, rests upon a reasonable basis, having its foundation in the public policy of the State, and does not therefore operate to deprive this plaintiff of the equal protection of the laws. The relief he now seeks is accordingly denied.

[fol. 66]

APPLICATION OF MRS. MAUDE FLORENCE HANCOCK WILSON

Mrs. Maude Florence Hancock Wilson, claiming to be a member of the same class and similarly situated with the plaintiff McLaurin, has renewed her application for entrance to the University of Oklahoma to pursue a course of study in social work, and upon being denied entrance, she comes here seeking the same relief sought by McLaurin in his class action.

The facts are that Mrs. Wilson applied for admission to the University of Oklahoma on January 28, 1948, for the purpose of studying for a master's degree in sociology.

She was morally and scholastically qualified to pursue this course of study, and it was unavailable at any separate school within the State of Oklahoma. When her application for entrance was denied, solely because the laws of Oklahoma forbade it, she filed suit in the District Court of Cleveland County, Oklahoma, in May 1948, for a writ of mandamus to compel her admission on substantially the same grounds now asserted here. Having been denied relief in the District Court, she has perfected her appeal to the Supreme Court of Oklahoma, and that appeal is now pending and undecided. She did not renew her application for admission to the University until October 14, 1948, two days after registration was closed to any applicant for any course of study at the University.

Having elected to pursue an equally adequate remedy in the courts of the State for the purpose of securing equal protection of the laws, and is now actively pursuing that remedy, she is not similarly situated with the plaintiff, McLaurin. Moreover, the course of study she now seeks to pursue is not the same as the one originally sought, and [fol. 67] not having applied for admission until all other persons would have been similarly denied admission, she is not within the class for which this suit is prosecuted. The relief sought by her is, therefore, denied.

(S.) Alfred P. Murrah, Edgar S. Vaught, Bower Broadus.

[fol. 68]

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. 4039 (CIVIL)

G. W. McLAURIN, Plaintiff.

vs.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION, et al.
Defendants.

JOURNAL ENTRY OF JUDGMENT—Nov. 22, 1948

Be it remembered that this cause came on for further consideration on the 25th day of October 1948. The plaintiff, McLaurin, appeared in person and by his counsel,

Thurgood Marshall and Amos T. Hall. The applicant, Mauderie Florence Hancock Wilson, appeared in Person and by the same counsel of record. The defendants appeared either in person or by and through the Attorney General of the State of Oklahoma, the Honorable Mac Q. Williamson, and Assistant Attorneys General Fred Hansen and George T. Montgomery. Testimony was heard, and the case was finally submitted on briefs of the parties.

Upon consideration of the evidence, argument and briefs, it is ordered that the relief now sought by the Plaintiff McLaurin should be and the same is hereby denied.

It is further ordered that the relief prayed by the applicant Wilson should be and the same is hereby denied, and the complaint is dismissed.

Alfred P. Murrah, Edgar S. Vaught, Bower Broad-
dus.

[fol. 69]

IN UNITED STATES DISTRICT COURT
AMENDMENT OF JOURNAL ENTRY

Upon suggestion of counsel for the plaintiffs, the last paragraph of the order entered on November 22, 1948, is hereby amended to read as follows:

It is further ordered that the relief prayed for by the applicant, Wilson, should be and the same is thereby denied. The complaint as to each of the parties is dismissed and judgment is entered for the defendants.

Alfred P. Murrah, Edgar S. Vaught, Bower Broad-
dus.

[fol. 70] [Stamp:] Filed January 10, 1949. Theodore M. Filson, Clerk, by D. Lucille Leslie, Deputy

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. 4039 (Civil).

G. W. McLaurin, Plaintiff

vs.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION, BOARD
OF REGENTS OF UNIVERSITY OF OKLAHOMA, George L. Cross,
Lawrence H. Snyder and J. E. Fellows, Defendants

Reporter's Transcript of Trial Proceedings

Before:

THE HONORABLE ALFRED P. MUREAH,
Judge of the United States Court of Appeals;

THE HONORABLE EDGAR S. VAUGHT,
United States District Judge for the Western
District of Oklahoma;

THE HONORABLE BOWER BROADDUS,
United States District Judge for the Northern,
Eastern and Western Districts of Oklahoma.

REPORTER'S TRANSCRIPT OF HEARING ON MOTION TO MODIFY
JUDGMENT

In the United States Court House and Post
Office Building, Oklahoma City, Oklahoma.

October 25, 1948

APPEARANCES:

For the Plaintiff:

AMOS T. HALL,
107½ North Greenwood,
Tulsa, Oklahoma.

THURGOOD MARSHALL,
20 West 40th Street,
New York, New York.

[fol. 71]

For the Defendants:

MAC Q. WILLIAMSON, Attorney General,
State of Oklahoma,
State Capitol Building,
Oklahoma City, Oklahoma.

FRED HANSEN, Assistant Attorney General,
State Capitol Building,
Oklahoma City, Oklahoma.

GEORGE T. MONTGOMERY, Assistant Attorney General,
State Capitol Building,
Oklahoma City, Oklahoma.

[fol. 72]

PROCEEDINGS

October 25, 1948.

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Murrah: Are the parties ready in No. 4039 Civil, McLaurin versus Oklahoma State Regents?

Mr. Williamson: The State is ready.

Mr. Marshall: We are both ready, sir.

Judge Murrah: Now the Court understands that this case comes on for hearing this morning on the plaintiff's application to modify its order of September 29 to require the defendant to admit the plaintiff to the Graduate School of the University of Oklahoma for the purpose of taking courses leading to a Doctor's Degree in Education, subject to the same rules and regulations which apply to other students in the said schools, is that correct?

Mr. Williamson: May it please the Court, that is the main motion or the main order of business, but I think the Court should be advised that in pursuance, I take it, that procedure, counsel for plaintiff caused to be issued subpoenas duces tecum directed to the Secretary of the Regents for Higher Education and the Secretary of the Regents of Oklahoma University, which subpoenas were properly issued and served, and which demanded each of those respective officers to bring all and entire the minutes of those two organizations for the past three years before this Court.

[fol. 73] Now when we learned of that we filed in this Court for reasons which will be more or less obvious, a Motion to Quash this subpoena duces tecum, and we believe that in the orderly process of things that should be taken up first, in order that we may see whether or not all of the records pertaining to every bit of the State's business handled by two constitutional boards, should be brought here in this case at this time, for the past three years.

Judge Murrah: We will reach that immediately, but you agree, Mr. Counsel, that is the issue, the primary issue, the Motion to Modify?

Mr. Marshall: There is another issue, sir. We do believe that, and I think in all fairness we should make our position clear: It is our understanding throughout the two hearings in this case that this was a proceeding for class, which was limited to those who had applied and who had been refused, and this being a class action, in reference to the prayer for further relief, we have just been advised that one of the people who expected to go to school, Mrs. Mauderie Hancock Wilson has, according to a ruling of the Attorney General, been excluded, and in view of the fact that this is a class action and that she is clearly within the class as determined by the Court, and as I remember at the first hearing with the full agreement of the Attorney General, I do believe that we are entitled in this case to also [fol. 74] consider the facts as to the reason for her being excluded, which is a further reason, I submit, sir, for the request for further affirmative relief so everybody in the class will be protected.

Judge Murrah: You desire to enlarge your pleading, amend the pleadings before us at this time?

Mr. Marshall: To be perfectly frank, I think it could be handled in one of several ways. One is that she could request to intervene, the other that she could file a petition in the form of a petition for further relief, all of which would take time. There is also the question that her particular case is pending over, having been decided by a State court. It is now a question as to whether it will be appealed or not. All of which questions, it seems to me, just add up to a question of time to be consumed, and in this case we believe that if affirmative relief which we pray for is issued in the McLaurin case as such, it will apply to

her. That is the reason we didn't want to take any of these other proceedings, because of the matter of time involved.

Judge Murrah: But the Court inquired whether or not you cared to enlarge your pleadings to ask for further relief.

Mr. Marshall: The only question as to the pleadings, sir, if it isn't necessary for an extension of time to give the other side a time to answer. We would be perfectly [fol. 75] willing to go as we are because time is of the essence, and we believe that if we request for permission to amend, that the other side might have, I don't know, sir, on a petition for further relief, as to whether the other side would have a right to answer. Frankly, I don't know the answer to that.

Judge Murrah: Mr. Attorney General, could you enlighten us on that point?

Mr. Williamson: I believe technically under the rules, at least as I understand it, we would; but I want to assure the Court that there is no disposition on our part to take unnecessary time away from reaching the issues as they appear in this series of litigation. We have never yet prayed for time and we shan't begin it now. I do believe that in an orderly pleading, I would suggest that if counsel for plaintiff here wishes to include Mauderie Wilson within the scope of this litigation, I believe her name ought to appear by way of amendment to the pleadings. I think it would be very irregular and unusual for us to take it up without something in the pleadings indicating that she has now arrived as one of the parties in this lawsuit. I have no disposition to delay unduly. I would only ask for such time as would be a reasonable time under the circumstances, perhaps none at all.

Judge Murrah: Thank you. We will reach that when we get to it. Meanwhile, we have the more immediate issue [fol. 76] relating to the named plaintiff. Now what is the issue specifically with respect to the plaintiff McLaurin? Certainly his position is a little bit different than anyone else in this way, that he has—of course the Court doesn't live in a vacuum, and we understand that certain events have transpired since this Motion was made and I would like for you to make a statement at this time concerning the issues involved at the present time.

Mr. Marshall: May it please the Court, as I understand the issue at the present time, the plaintiff G. W. McLaurin has been admitted to the University of Oklahoma to the courses he requested. There is no question but that he is getting the courses that he asked for.

However, as I understand the position, judging from copying of minutes that I have been privileged to see of the Board of Regents of the University of Oklahoma which will be produced, the opinions of the Attorney General of the State of Oklahoma, it has been agreed that the segregation statutes, the three statutes involved, do not apply to this case, having been declared unconstitutional as applied to McLaurin, that the officials, under the advice of the Attorney General, have admitted him without reliance upon these statutes. However that pursuant to an alleged inherent power of the Board of Regents as such, the Board of Regents without a statute requiring them to do so, have [fol. 77] undertaken the task of placing McLaurin in an anteroom outside of the regular classroom.

Judge Vaught: Now just a moment. When did this Court say that the segregation statutes were void?

Mr. Marshall: The ruling, sir, as I remember the journal entry, was that as applied to McLaurin, they were void.

Judge Vaught: In so far as his admission to the State University was concerned. This Court has never held that they were void or that they were unconstitutional. They held that they were unconstitutional in so far as it precluded McLaurin from being admitted to the University, since there were no other facilities equal to that provided otherwise.

Mr. Marshall: Yes, sir. If I may say, sir, the paragraph says that it is ordered and decreed that in so far as Sections 455, 456 and 457 are sought to be applied and enforced in this particular case, they are unconstitutional and unenforceable, sir—on the last page of the journal entry.

Judge Vaught: That has to do merely with his admission to the University.

Judge Murrah: We will construe our judgment in the light of the facts which have transpired. Now let me suggest that you tell us your position in the case, what you expect to prove.

Mr. Marshall: What we expect, sir, is that, if I [fol. 78] may make just one preliminary statement as of

the present time, and the factual situation as it exists. Now the defendants cannot be enforcing these statutes because these statutes say—it is unlawful to teach a white and colored student in the same school. There is no question that he is in the same school, but as I understand it, the position is now taken that under the inherent power of the Board of Regents, in the absence of statute, he is being segregated and we are prepared to put on evidence to show one, that the effect of that upon the plaintiff himself in regard to whether or not he is getting an equal education, and two, that there is one point of law on which there is no dispute, there is no law on the other side in the Federal and State courts, that in the absence of a State statute requiring segregation, no administrative board can set up segregation in public schools, and it is our position that the Board of Regents, the defendants in this case, not having a State statute requiring segregation, cannot on their own inherent power segregate in any fashion.

So that we have two points, one is that they cannot segregate in the absence of statute; and two, that this segregation itself deprives this plaintiff of getting what we started out for him to get, which is an equal education, and that is why in the petition for further relief we ask that further relief be granted, which is the only type of [fol. 79] relief which will give him what he is entitled to, that is an education subject only to the same rules and regulations.

Judge Vaught: What is it that you want? Just put it in plain English. What is it that you want?

Mr. Marshall: We wanted McLaurin admitted just like any other student, take his seat in the same way as any other student.

Judge Vaught: In other words, you want him in the same room with the other students.

Mr. Marshall: Why, yes, sir. That is the only way he can get an equal education. That is our point.

Judge Murrah: Very well. That defines the issue. Now I think it is appropriate to take up your Motion to Quash the subpoenās.

Now, cannot we have an agreement between the parties here that this plaintiff has been admitted to the University of Oklahoma on the date on which he was admitted, to

pursue the courses he sought to pursue there, and that conditions under which he was admitted, that is the physical conditions or the actual conditions.

Mr. Marshall: If your Honor please, I would prefer to develop that by testimony if possible. We have the plaintiff here and we propose—

Judge Murrah: (Interposing) I want you to make a statement about it. We don't want to take any testimony. [fol. 80] unless it is necessary.

Mr. Marshall: I think he was admitted, I think it was on October 13, and that he was permitted to pick the courses he wanted to pick, and that he was carried to a room, placed behind a desk, and it was either an anteroom or another room from the main classroom, subsequent to that day, as I remember it, sir, the balance of the class was moved down to that room, and since that time he has been permitted to stay there on those conditions.

Judge Murrah: Well now, state where, the Court must have the picture there and I feel you ought to be able to state it as well as your witness can.

Mr. Marshall: I can state it, sir, that it is Room 103 and Room 104, one of the regular classrooms. The other is an anteroom that has been used for a small library with an area for opening between the two rooms, and the class is in the large classroom, and McLaurin's desk is on an angle in the other room, nothing separating them in the area in the door there, and that is where McLaurin sits.

Judge Murrah: He can see the instructor?

Mr. Marshall: Yes, sir, he can see the instructor, he can see practically every student. He can hear the instructor and he can hear the other students. We have pictures by commercial photographers which will show the exact setup, taken from four or five different angles.

[fol. 81] Judge Murrah: Would you produce them? Do you wish to put them in evidence?

Mr. Marshall: Yes, sir.

Judge Murrah: Have them identified and submit them to the Attorney General.

Mr. Attorney General, is there an instructor here or someone who knows exactly what conditions are, or do you know?

Mr. Williamson: I wouldn't know, your Honor.

Judge Murrah: Anyone here who does?

Mr. Williamson: Yes, sir, we have the President of the University. We have Dr. Fellows.

Judge Murrah: Dr. Wrinkle would know. Dr. Wrinkle, would you examine these photographs and see if it can be agreed that they fairly represent the physical conditions under which this plaintiff is attending the University of Oklahoma and the classes in question.

Mr. Counsel, you agree or do you agree—I am not asking you to admit anything that you do not wish to or that might be prejudicial—but do you agree that the physical conditions under which this plaintiff is admitted are equal to the physical conditions under which the other students attend the class?

Mr. Marshall: No, sir, because of the fact that he is not in the classroom itself, and by being placed outside [fol. 82] there is a certain pressure on him of being excluded, which is not conducive to the person's ability, and there are other situations, I might say, about his library, his eating facilities and all which I hope to develop.

Judge Murrah: I see.

Mr. Williamson: I would like to state to the Court that counsel for the defendant has examined the five photographs showing the classrooms where the plaintiff herein is attending school and showing particularly his desk room and his seat in the classroom, and we agree that these pictures portray, are fairly representative of the situation as it exists there in the Education Building.

Judge Murrah: Mr. Counsel, will you ask him to mark that so they can be admitted in evidence.

(Five photographs of classroom were marked Plaintiff's Exhibits 1, 2, 3, 4 and 5 for identification and received in evidence.)

Mr. Williamson: I might state further to the Court that it is entirely appropriate if somebody would interpret them for the Court to indicate which seat is the plaintiff's.

Judge Murrah: All right.

Mr. Williamson: It will be difficult to pick it out otherwise.

Judge Vaught: Let us look at it and if we need any interpretation we will ask for it.

[fol. 83] Judge Murrah: Now Mr. Counsel, will you please proceed with your proof, that is, with your statement.

Mr. Marshall: All right, sir.

Judge Murrah: I think we should say to you, perhaps we haven't made ourselves clear, it is the settled policy of the Court of this jurisdiction to attempt to secure agreements as to proof about which there is no dispute to avoid the time and taking testimony. We call that pre trial procedure in this jurisdiction, followed uniformly, and our purpose here is just to define our area of agreement, and of course that means that we are not going to require the production of any documentary evidence if it can be agreed upon.

Mr. Marshall: I understand, sir. Thank you.

Judge Murrah: Now you may proceed at your pleasure just to state what you expect to prove for the record, and the Attorney General will state whether or not he can agree to it, and if not what part he cannot agree to, and we will thereby be enabled to define the issues upon which there must be proof.

Mr. Marshall: If your Honor please, we expect to produce evidence to show: One, the exact conditions under which the plaintiff is studying, from the plaintiff himself, as to the classroom, library and dining facilities. We expect to show by that proof—

Judge Murrah: (Interposing) The pictures depict, [fol. 84] I suppose you agree that they depict the actual conditions under which he attends the class.

Mr. Marshall: Up to the present time they are accurate, sir.

Judge Murrah: What is your next point about that? That is the classroom. There is some point about the dining facilities.

Mr. Marshall: We will wish to show that in the library he is stuck up behind a stack of books on, I think the 7th floor. The other graduate students have a regular Graduate Study Hall. That requires him to come downstairs, apply for his books, pick them up, go back upstairs and into his little place.

Judge Murrah: Will you state those circumstances, just state them, will you please.

Mr. Marshall: As I understand, he has been set aside a space behind the stacks on the 7th floor, and that is his study

place for library purposes, and if he needs a book he has to come down and get the book at the regular place where all the students get their books, carry it back up into the library, his little place up in the library, to study.

Judge Murrah: The same library?

Mr. Marshall: The same library, same building.

Judge Murrah: Used by the other students?

[fol. 85] Mr. Marshall: Used by the other students. There is a private room for graduate students.

Judge Murrah: In other words, there is a place set apart for him to pursue his studies in the library, and in order to do that it is necessary for him to leave this place and go down or up?

Mr. Marshall: Go down.

Judge Murrah: Go down to the library, get his books and bring them back to this place and use them there at this designated or what we would call segregated place.

Mr. Marshall: That's the point.

Judge Murrah: Do you have knowledge of that, Mr. Attorney General?

Mr. Williamson: Not personally but I have here and can produce testimony.

Judge Murrah: Can you agree that those are the facts?

Mr. Williamson: I can't at all. In the first place I didn't know we had a seven-story library at Norman.

Mr. Marshall: I am not sure of that.

Mr. Williamson: I am not, either. I just don't think we do.

Judge Murrah: All we are trying to do—Judge Broadus has to be in another jurisdiction tomorrow, supposed to be, and we are all exceedingly busy, Judge Vaught recessed [fol. 86] his court for this—what we would like to do is to handle this case as expeditiously as possible. We do not wish to prejudice anyone in the presentation of evidence, and we shall not, but we hope and we think that you ought to be able to agree upon these facts.

Mr. Marshall: With one exception, sir. I would prefer to have the plaintiff—he is the only one who can testify what this does to him. I can't. It just won't take over fifteen minutes.

Judge Murrah: All right. Wait a moment, just a moment.

Mr. Williamson: I might say to the Court and for the record after conferring with Dr. Wrinkle, who is Chairman of the Interim Committee on this particular field of education, Dr. Wrinkle who is personally advised and is a member of the faculty of the University of Oklahoma, tells me that we have a library building now down there consisting of a basement and two floors, in other words three floors, counting the basement; that the main desk where control is exercised over the library, where someone in authority sits, is on the street floor of the library, and that there is another floor, the second floor of the library above that, and that it is on the second floor of the library where the plaintiff, McLaurin's desk is placed; that they have a series of landings, a stairway with landings, and that there [fol. 87] may be six or seven landings in order to approach the desk on the second floor; that the desk is probably actually located above the permanent second floor on a landing up above the floor itself, but that it is not even as high as the third floor because there is no third floor. Therefore his desk is on the second floor or perhaps slightly elevated above it, and that he would have to go the equivalent of one ordinary full flight of stairs from the second floor down to the main floor in order to make his record on books that he wants.

Judge Vaught: Do other students use the second floor also?

Mr. Williamson: I might say that the students generally—the Court of course knows there are many thousands of them—they do go in and roam over the building and take their books. They can take them anywhere they can find a place to sit down. They sit down and study. They do not have the advantage of an individual desk, thousands of them there. They take the books and retire from the building and across the campus and take them to their homes, thousands of them, because they don't have desks in the room. That privilege is accorded to all students to withdraw books from the library because the library couldn't hold six or eight thousand students, and there are some eleven thousand plus on the campus.

Judge Murrah: Let me see if I cannot state for [fol. 88] the parties substantially the facts developed up to this point: That it is agreed that the plaintiff McLaurin was on the blank day of October—

Mr. Williamson: 13th.

Judge Murrah: The 13th of October admitted to the University of Oklahoma and to the courses which he sought to pursue in his application to the University proper officials on January 28, 1948, that he was admitted to the same classes that other students pursuing these courses, under the same instructors, and that he was assigned a permanent desk or chair in an anteroom to the main classroom where other students were seated, that the Exhibits 1 to 5, which have been introduced into evidence, fairly represent the physical conditions under which he was admitted, and where he now sits and now pursues his course of study.

It is further admitted that he can from this position see the instructor and hear the lecture, that he can see all or most of his fellow students, and that he is not obstructed in listening to the lecture or pursuing his course, except under conditions which may be hereinafter discussed.

Mr. Marshall: Yes, sir.

Judge Murrah: Now it is further agreed that he is admitted to the library at the University of Oklahoma where all other students are admitted and on the same conditions, except that he is assigned a permanent desk on [fol. 89] the landing above the second floor of the library, and that he is required by the administrative rules to occupy this desk while using the library, and in so doing he is required to leave his desk, go to the librarian, I suppose, and get the books he wishes, take them to this desk and use them there; while other students pursuing the same courses and using this library, go into the library, select the books they wish and take them home or any place that they may wish to pursue their studies.

Gentlemen, is that about right?

Mr. Williamson: That is about right as far as we are concerned except I wish to call the Court's attention to the fact that the Court made the statement in dictating this agreed statement that this plaintiff is seated in an anteroom. We think he is seated in what had been an anteroom, all obstruction is removed.

Judge Murrah: Very well.

Mr. Williamson: We could agree to it if the Court please, with that change.

Judge Murrah: Well, take out the word "anteroom" and just say "adjoining room".

Mr. Williamson: Well, if the Court please, the idea of rooms—psychologically when you talk about an adjoining room you think about a wall between them, and I think that is really a bit unfair to the defendant because there is no [fol. 90] wall there.

Mr. Marshall: If your Honor please, there is a wall there.

Judge Vaughn: It is an alcove.

Mr. Williamson: There is no obstruction to vision in the world. The photographs speak for themselves. It is a part of the same room after certain adjustments were made down there.

Judge Murrah: It is agreed that these exhibits depict conditions under which he is seated and under which he pursues his course of study there?

Mr. Williamson: That has been admitted and is agreed.

Judge Murrah: Now is that satisfactory?

Mr. Marshall: Yes, sir.

Judge Murrah: Now then, very well, will you state any other conditions to which you object, such as I believe you stated something about dining facilities.

Mr. Marshall: The dining facilities, sir, would have to be developed, I think, by the plaintiff.

Judge Murrah: Can't you make a statement about that?

Mr. Marshall: The only statement I could make on it is that he is assigned to a place in what is known as the "Jug" which is an eating place on the campus, a regular [fol. 91] eating place where he eats by himself, and I might say, sir, that is the reason I would rather have him to explain it, because of the effect that that has on him, I think can only be explained by him because it is outside of the regular classroom work.

Judge Murrah: Well now, of course from a practical standpoint we may as well face the issues. It is perfectly apparent from what has been said here up to this point, that this plaintiff has been admitted to the University of Oklahoma for the purpose of pursuing the same course of studies, under the same instructors, attending the same classes, under segregated conditions.

Mr. Marshall: Yes, sir.

Judge Murrah: And that is the point that you wish to assail here in this lawsuit.

Mr. Marshall: Yes, sir.

Judge Murrah: The sooner we develop those points and crystallize the issues here, the quicker we will all be out. Can't you make a statement about it? Of course the only alternative we would have would be to take testimony, but we hope that it will not be necessary to do that because we realize that if we get started introducing testimony here, that we will be here a great length of time, more than should be necessary to try this lawsuit.

Mr. Marshall: The only testimony we have, sir, on that point, is the plaintiff, to tell in a brief statement, [fol. 92] which will not take more than ten or fifteen minutes; and the other thing I think we can stipulate is that under the present existing situation at the University of Oklahoma, all other students, regardless of racial background or national origin or creed, are admitted freely without segregation of any kind and that the only group segregated in the University of Oklahoma at the present time is this plaintiff and all other Negroes who will apply.

Judge Murrah: I think that is perfectly apparent.

Judge Vaught: That is a State statute, isn't it?

Mr. Marshall: They are doing it, sir, as I understand it, in the absence of the statute.

Judge Vaught: Now that "Jug" you speak about—that's a restaurant?

Mr. Marshall: That's a restaurant. The name "Jug" is just a name. There is nothing about its being not a decent place.

Judge Vaught: White students are accommodated there, too?

Mr. Marshall: Yes, sir, so far as we know, sir, but not at the time. It won't take over a few minutes.

Judge Murrah: Well, we want to make sure. I hope it will not be necessary to cover ground that we have already covered.

Mr. Marshall: No, sir, I am not going into the [fol. 93] background at all.

G. W. McLAURIN

the plaintiff, called as a witness by the plaintiff, was duly sworn and testified as follows:

Direct Examination.

By Mr. Marshall:

Q. Mr. McLaurin, you are the plaintiff in this case?

A. Yes, sir, that's right.

Q. Do you remember on October 13, is that correct, you were admitted to the University of Oklahoma?

A. That's right.

Q. Will you state briefly the circumstances after your classes were arranged and you were placed in the room that you now use as your classroom.

A. Those pictures describe the room in which I was placed adjoining the main classroom, and sometimes I would sit by the wall and there would be just an opening and of course it is necessary for me to look with a greater angle than anyone else to see the west side of the blackboard and so forth, and quite strange and humiliating to be placed out in that position, and it handicaps me in doing effective work, always conscious of something, bring about unnatural conditions and so forth. It is really handicapping me. Sometimes I can't concentrate my mind on work as I should.

Q. Now Mr. McLaurin, you have touched on it, but [fol. 94]. I wonder if you would give to the Court in your own words the exact effect, good or bad, upon you of being in this anteroom or as you have described it, the room just connected with the regular classroom, limited to the question of you getting the education you want. That is the only thing that this Court is interested in.

A. Well, it hinders me from doing effective work as I have desired to do. That handicaps me and why of course I can't study and concentrate like I would want to do. Of course if I was just, you know, free without any handicaps to take a seat in the regular classroom where I wouldn't be conscious of anything else but got my mind right on my work.

Q. Realizing, Mr. McLaurin, you are hearing the same professor and hearing the same students, and getting the same instruction from the professor, why is it that you make the statement in your last answer, that still you are impeded in getting the education you desire?

A. I don't quite catch your point.

Q. Just why is it that you cannot concentrate, I think is the word you used, just why?

A. Well, just different, just like now suppose that was the class over there, and then I am a member of the class sitting up here, so to speak, then you would have quite an effect on me, brings about a feeling that it is something

irregular that I can't sit in the classes, which makes me [fol. 95] conscious that something out of the ordinary or something out of the way where I can't sit in the class just like the other ones, brings about that consciousness and so forth.

Q. Does that have any effect on your studying, in your ability to take in what the professor is giving?

A. Absolutely does.

Q. How does it?

A. Keeps me from taking in the knowledge that I should because those conditions will hinder me from learning and grasping things as fast as I should.

Q. Now Mr. McLaurin, the library facilities that are offered to you, just where is the space that is assigned to you?

A. I go by floors and stacks, but you know when I go up there, I press the fourth button of the elevator and it says the fourth floor, fourth stack, something and supposed, required to have a special desk up there, and close to, I guess about half a carload of newspapers, old ones and so forth. I guess about two or three feet from me all those old newspapers, and of course I am required to remain at that desk and study and when I want to get books, I think it is on the second or third floor, I am not permitted to sit in the main study hall down there and study.

Q. Mr. McLaurin, is this space where you are assigned, is that a room or just what kind of a place is it?

A. Well, it is a place where they call the stacks, and my [fol. 96] desk being in front of the stacks, you know where they keep the books and so forth and not a regular study hall. Of course students come up and want to take notes, something like that, you might say, a few notes and go back, but that is my regular place where I must carry my books back and remain there and study them there except when I go to take them down.

Q. You can't stay when you go down to check out a book?

A. Check out a book and go up behind the stacks.

Q. That is your only place assigned to you?

A. If I want to go in and study, why then I have to go up behind the, behind the stacks and study, whether I am looking up anything back up there or not, that is my regular place.

Cross Examination.

By Mr. Williamson:

Q. You entered school on the 13th of October?

A. That's right.

Q. Moved into your place in the classroom. It is in the classroom, isn't it?

A. Well, it's a double room, not in the regular classroom, this wall is between my room and the regular classroom. Of course it's an opening just large enough for a large double door, maybe about as large an opening as one of those double doors.

Q. As distinguished from a peek hole, it is just a [fol. 97] removable whole wall, isn't it, in front of you?

A. How's that now?

Q. There is no wall in front of you in between you and the class and instructor, there is no wall there?

A. Well, it is, I mean, it's a wall in front and a wall in the rear of the building. Of course my desk is placed close to the door there.

Q. You don't mean to tell the Court there is a wall in front of where you sit?

A. I mean it is a door there between two walls, it is a door there, an opening to the class, and then I don't mean I am sitting behind a wall. There is a wall between me and the class, and something like that double door. You see the door is in about the middle of the wall there, I guess something like that.

Q. You have seen these pictures that have been introduced in evidence, have you not?

Judge Murrah: That is a point I don't think we can enlarge upon or that the plaintiff could make the picture plainer than the picture itself.

Mr. Marshall: We agree that those do represent the conditions under which he is attending classes.

By Mr. Williamson:

Q. I'd like to ask one question with reference to the library facilities. Now you have a desk there and you say it [fol. 98] is behind some newspapers.

A. I said stack of newspapers, not behind, close to it, I suppose a carload, something like that, old newspapers.

Q. Are you acquainted with the fact that there are eleven thousand students attending Oklahoma University and that

you are the only one that has the privilege of a desk in the library building, is that true?

A. Naturally I was under the impression that advanced students working on a Doctor's Degree, that they always receive a special desk in the Graduate Department. That's the way I was under the impression.

Q. All right, I will ask you this question: Do any of the other students, advanced students who are attending graduate work leading to a Doctor's Degree in Education, do any of them have desks in the library?

A. Well, now, I haven't checked on that. I am up there by myself and of course I haven't had a chance to go in and see.

Q. You mean nobody ever comes up there?

A. How's that?

Q. You say nobody ever comes up?

A. Some of the boys come up and check out books and go back down.

Q. You tell the Court that you do not have the privilege of browsing through the book shelves?

A. I am not in the shelves, I mean down in the main library.

[fol. 99] Q. I am talking about browsing through the shelves, in the books on the shelves, you have that privilege, do you not?

A. I get the books, I mean the study hall where I have to get the books and have to go back.

Q. How many times have you been in the library since the 13th of October.

A. Well, I didn't check them, been there several times.

Mr. Williamson: I believe that's all.

Judge Murrah: Is this place that you speak of a part of the library?

The Witness: I don't know whether or not they are arranged so that they could be used. I guess maybe people just kept their old books or something like that.

Judge Murrah: Do you wish to develop any further points?

Mr. Marshall: No, sir, not with this witness, sir. That's all, Mr. McLaurin.

Judge Vaught: One question. This restaurant, now you can get your meals down there at regular hours?

The Witness: Well, it's an arrangement.

Judge Vaught: Just answer the question, can you get your meals there at regular hours?

The Witness: I can.

Judge Vaught: And you get the same food that is provided other students as far as you know?

[fol. 100] The Witness: Well, I couldn't tell because I haven't been in there when they are served. I couldn't tell just whether I get the same service or not but then I know I am assigned a special place. I am the only one in there, and of course I do not have my meals served on the cafeteria order, where they go right around and make his own selection. Why of course it is that I just have to take what is brought me, that's all.

Judge Vaught: That's a cafeteria, isn't it? What is it?

The Witness: That's a cafeteria. I am not served on a cafeteria order.

Judge Vaught: But this is a regular cafeteria?

The Witness: Well, I don't think it is because it's got an ad out there, doesn't say—called the "Jug."

Judge Vaught: Well, the "Jug" is the same as the "Copper Kettle," isn't it?

The Witness: Well, that's the particular name for this place.

Judge Vaught: All right.

Judge Murrah: That's all.

(Witness withdraws.)

Colloquy between Court and Counsel.

Mr. Marshall: May it please the Court, did we agree with the Attorney General about the stipulation that everybody else, under the present ruling of the University, [fol. 101] the only group that is excluded from general participation in everything are Negroes, the only group that is segregated are Negroes?

Mr. Williamson: I don't know about general participation in everything. Of course we can't agree to that because I know one or two Jewish organizations down there, when you talk of everything, that gentiles can't participate in.

Mr. Marshall: I am not interested in that sort of thing. I am perfectly glad to limit it to that question.

Mr. Williamson: Let's limit that.

Mr. Marshall: That the only group of citizens attending the University of Oklahoma who are segregated are Negroes.

Mr. Williamson: Segregated, yes, to the extent shown here in the record.

Mr. Marshall: Are Negroes.

Mr. Williamson: Yes.

Judge Murrah: That seems to be fair and it is so agreed, then, gentlemen.

Mr. Marshall: If your Honor please, that's all in so far as the McLaurin case, with the exception of the letters from the Attorney General to the Board of Regents, the Minutes of the Board of Regents.

Judge Murrah: Very well.

[fol. 102] Mr. Marshall: I would like to have those in evidence.

Judge Murrah: Do you have them, Mr. Attorney General?

Mr. Williamson: We are certainly in possession of them. I presume. Now comes on the necessity of a constitutional board bringing in the Minutes for the past three years, covering every conceivable official activity, but I don't understand you have asked for that.

Mr. Marshall: I asked for everything, every Minute of the Board of Education, the Board of Higher Regents from October 1st, I think it is, to the present time, and every opinion of the Attorney General during the same period of time.

Judge Murrah: I think, Mr. Counsel, without consulting my associates, that the Court would not be disposed to require them to produce every Minute and every Opinion. I think that is entirely too general. If you will be specific.

Mr. Marshall: On this subject matter, I beg pardon—I meant on this subject matter.

Judge Murrah: Now I think you should be a little more specific than that if you can and limit your question to what dates. Are you familiar with them?

Mr. Marshall: I am familiar.

[fol. 103] Judge Murrah: You are familiar with every Minute and every Opinion that you wish to put in evidence, aren't you?

Mr. Marshall: Yes, sir.

Judge Murrah: Why don't you take them up, sir, one at a time?

Mr. Marshall: I think, sir, we can agree if you will give us a few minutes.

Judge Murrah: I am sure we can. I haven't any doubt that you can. Now would you like to have a recess or can you—

Mr. Marshall: I think we can do it in five minutes.

Mr. Williamson: I would like to say to the Court we originally handed copies of our Opinions as they are issued to Mr. Hall because Thurgood Marshall has been in another state. Amos Hall, I think, will say that we have.

Judge Murrah: Do you have them now?

Mr. Williamson: Do you have them in possession, Mr. Marshall?

Mr. Marshall: No, sir, the only one that I don't have is the Minutes of the meeting of October 10th.

Judge Murrah: Do you have all the rest of them?

Mr. Marshall: I have the ruling.

Judge Murrah: Why don't you offer them?

Mr. Marshall: They are copies.

[fol. 104] Judge Murrah: If they handed them to you they are authentic and they are entitled to be admitted if otherwise material.

(A short recess was taken with the Court on the bench.)

AFTER RECESS

Judge Murrah: Now in order that we may understand each other as we go along, the Court is of the opinion, we don't want to render judgment before it's submitted to us, but in connection with these records of which you speak, we think it perfectly competent to show the action of the Board of Regents in respect to the matters involved, but we doubt very seriously if it is competent to show its deliberations.

Mr. Marshall: No, sir. May I suggest, if the Court please, the Attorney General has had prepared photostats of the Minutes concerning this particular one.

Judge Murrah: Very good, sir.

Mr. Marshall: I was about to make the suggestion, sir, that the whole thing that they have there, which are photostats, be placed in so that either side can use what portion they want, if there is any question ever comes in your Honor's mind about it, it will be here, but no question of the authenticity of them and that they be in there for that purpose.

[fol. 105] Judge Murrah: The Court does not wish to encumber this record with matters that are not material.

Mr. Marshall: Yes, sir.

Judge Murrah: It is perfectly all right for them to be made available so long as it does not encumber the record.

Mr. Marshall: There are only two pages in the one that we want in the record, and what has taken place since the judgment of the Court, and let the other just sit there in case.

Judge Murrah: That is a matter for you to decide.

Mr. Williamson: There are some fifteen or twenty pages here and we had them photostated, it's true, but it seems to me like that the record ought not to be encumbered with the entire fifteen or twenty pages consisting of telegrams and opinions the Court knows about.

Judge Vaught: Can't you agree and stipulate what the action of the Board was?

Mr. Williamson: I rather think we can. We have it boiled down. Where is that here? I think it is really the essence of the lawsuit.

Judge Murrah: Take your time, Mr. Marshall and see if that does not epitomize the facts you wish to present.

Mr. Marshall: This is all right for the 10th, this is October 10th, but if your Honor pleases, the October 6th [fol. 106] meeting, the Board decided at that meeting not to admit McLaurin.

Judge Murrah: You wish that for the record?

Mr. Marshall: I want that in the record.

Judge Murrah: Does the Attorney General agree, then, that those are the actual notes of the Board at that meeting?

Mr. Williamson: Yes, this was very relevant and we will admit it is in the Minutes, I think we can find it in a minute here.

Judge Murrah: It's been agreed now at the October 6th meeting of the Regents, the Board of Regents of the University of Oklahoma declined to admit this plaintiff to the University. That's all you seek to prove, isn't it?

Mr. Marshall: Yes, sir.

Mr. Williamson: At that time.

Judge Murrah: At that time. Now let's proceed to the next step. What's the next step?

Mr. Marshall: The next, sir, that we want is a copy of the letter from the Attorney General to, I mean this Resolu-

tion here—excuse me, which is an excerpt from the Minutes of the special meeting of the Regents of the University of Oklahoma held on Sunday, October 10, 1948, sir.

Judge Murrah: It is admitted, you agree to it?

[fol. 107] Mr. Williamson: I agree that it reflects the action of the Board held on that date.

Judge Murrah: It is admitted in evidence.

(Copy of an excerpt from the Minutes of a special meeting of the Board of Regents of the University of Oklahoma held October 10, 1948, marked Plaintiff's Exhibit No. 6 for identification, was received in evidence.)

Mr. Marshall: There is another letter from the Attorney General to President Cross, October 6, concerning the McLaurin case.

Mr. Williamson: We have furnished them two copies.

Judge Murrah: Do you wish that admitted in evidence?

Mr. Marshall: We would like to have that in evidence.

Judge Murrah: Any objection? It is admitted in evidence.

(Copy of letter from the Attorney General of Oklahoma to G. L. Cross, President, University of Oklahoma, dated October 6, 1948, marked Plaintiff's Exhibit No. 7 for identification, was received in evidence.)

Judge Murrah: What is your further pleasure?

Mr. Williamson: I'd say to the Court and to counsel that one of the final statements in this October Opinion is that we refer to an Opinion that our office, the Attorney General, gave to Governor Turner as of October 2 and enclosed a copy. Now we have no objection to a copy of the Turner letter. I don't know how relevant it is but that is referred [fol. 108] to in the October 6 Opinion, a copy was attached.

Mr. Marshall: I have no objection to it.

Judge Murrah: If you don't want it, it's not a question of what anyone else; it's what you want.

Mr. Marshall: I don't need it. I don't object to it. The other letters of the Attorney General of October concerning Mrs. Mauderie Hancock Wilson.

Judge Murrah: Can't you lay that aside for the present? Let's deal with Mr. McLaurin, the plaintiff McLaurin.

Mr. Marshall: I think, sir, that's all we have.

Judge Murrah: That's all the Minutes of the record that you deem pertinent to this particular inquiry?

Does the Attorney General wish to supplement this proof in any way?

Mr. Williamson: I have nothing to offer, your Honor, except that I would like to make about a two-line supplement in the form of testimony of Dr. Cross, to the effect that the "Jug" is a pet name for a luncheon room which is a part of the Student Union Building at Norman, where the same food is served in the various dining rooms. It is just merely one of a series of dining rooms on the floor above the cafeteria, I think, there.

Judge Murrah: Which is maintained by the University?

Mr. Williamson: Maintained by the University. They have a menu to select from, whereas eleven thousand or [fol. 109] more, more or less who desire to eat, have to line up and wait in line. A person in the "Jug" sits, is approached by a waiter, his order is taken, and his food brought to him.

Judge Murrah: It's been agreed.

Mr. Marshall: Of course we agree to it. The only point Mr. McLaurin was making was that he was there at a time all by himself.

Judge Murrah: He doesn't dispute those facts.

Mr. Marshall: I don't think so. He only knows what happens when he is there, he doesn't know what happens the other times, so we don't wish to question Dr. Cross at all, sir.

Judge Murrah: The Attorney General's statement is treated as if the testimony of Dr. Cross had been presented and is considered part of the evidence in this case as such.

Now what's your further pleasure, gentlemen, on the facts?

Mr. Williamson: Defendant rests.

Judge Murrah: Very well.

Mr. Marshall: We rest.

COLLOQUY RE STATUS

ADDITIONAL PARTY

Judge Murrah: Now we come to what might be termed the supplemental matter of the question of another party who claims to be a member of the class represented by this plaintiff, would that be correct?

Mr. Marshall: That is it exactly, sir.

[fol. 110] Judge Murrah: You may proceed as you wish in that respect. Perhaps you would wish to make a short statement.

Mr. Marshall: The statement I would like to make, sir, is that as I understand this being a class action, the relief granted in the case can be used by any member of the class, that there is no question that Miss Wilson is a member of the class, and I think that the Attorney General will agree that she did apply back in January, approximately the same time as Mr. McLaurin, and that the officials of the University of Oklahoma agreed that she is qualified in all respects except that she is a Negro.

The issues involved in her case are exactly the same as his case. There is therefore no question but that she is in the class, which was agreed upon, as I understand it, at the first hearing between the Court, the Attorney General—and this said—that the class was limited to that group but that it did apply to everyone in that group; that for that reason we were unable to proceed as to Miss Wilson as much because she has not been definitely refused.

I assumed that after the decision of this case, that all of these applications were standing more or less together, but the Attorney General as of October 22, there is no question about that, did rule that the University was not required to accept her at this time, and for that reason it is a further reason for us asking for affirmative relief. [fol. 111] because if this Court does issue affirmative relief it most certainly will apply to Miss Wilson as a member of the class. If she wants any further affirmative relief she will of course have to come in court and apply for it, but if an injunction is issued it would apply to the policy, custom and usage of excluding all members of this class, and she is a member of the class.

That is our position. I don't think we need any testimony. I don't think any one of the factual statements I have made will be disputed, and that, sir, is our position at this time as to Miss Wilson.

Judge Murrah: What does the Attorney General say?

Mr. Williamson: May it please the Court, I must differ with my friend and counsel across the table on the statement that the Wilson case is on all fours with the McLaurin case. You have an entirely different situation. On the McLaurin case itself this Court said "as to this particular

case." It is needless to go further in reminding this Court of its language. The McLaurin case decided the facts and circumstances in the McLaurin case, and we are now about to try another lawsuit, and may I say incidentally, so far without any pleadings, but here is the situation in the Hancock Wilson case: There were five or six of those people, three of them saw fit to file State court actions in mandamus [fol. 112] in the District Court of Cleveland County. One of them was dismissed, that action was McLaurin, and came for relief to this court. The other two actions are pending, including Mrs. Hancock Wilson.

Mrs. Hancock Wilson pursued her remedy in the State court and was met with a decision of the trial court at Norman denying her the mandamus. She ordered the record and appeal is now in process, and she has a full grown lawsuit on these various issues, pending in the State court at this time.

Judge Murrah: Wilson?

Mr. Williamson: Wilson, yes. It's not been dismissed. The situation is entirely different. She is battling on another legal front this good minute, while coming in here and informally so far asking for relief here. I don't say that is a violation of law, and I am just telling the Court about it.

Now it's different to this extent also: That while battling on that front, pursuing the remedy in that lawsuit, she comes down to Norman on the 14th of October, in the face of the fact that the University of Oklahoma has a standardized rule, printed and published in the Summer of 1948, saying to the world and to all who are interested, that on and after October 13, 1948 all enrollment privileges cease. That is a rule of the University. The University Board of Regents caused that rule to be passed, and they are a constitutional body and entrusted by the Constitution of this State with the full government of that institution, and that is one of their rules; on the 13th of October the curtain falls on all further enrollment activities, and in my opinion of the 22nd, and capable of being produced as testimony and as true, Dr. Cross tells me in a letter that since the 13th of October, 1948 no person, black, white, brown or yellow, has enrolled in the University of Oklahoma for any cause whatsoever, and that will be in the record when my October 22 Opinion will be read.

Now that is a situation where there is a vast difference between someone coming in after the curtain falls and in addition may I say to the Court that this applicant on the 14th, having come in later than anyone—the last person who substituted and asked for and is receiving instruction in sociology applied on September 18 and classes began on September 20—and this person comes in on the 14th of October and changes, without any warning or notice to the University, changes entirely her application for admission and strikes out the course in social work and enters up a course in sociology on the 14th of December after the gate has dropped and without notice to the University.

Judge Murrah: 14th of October.

Mr. Williamson: 14th of October, and initialed the change and went through all that procedure of changing [fol. 114] her course without notice, without warning, entirely different instructors, entirely different course of study, some of the subjects overlap.

Now on those particulars, on coming in after every and any university student has been in and at work, after this rule has been invoked and has taken effect as of the 13th, coming in on the 14th—that is the main point of difference between the two, that and the pursuance of legal remedies in another forum.

Judge Vaught: Now Mr. Attorney General—

Mr. Williamson: Yes.

Judge Vaught: I may have misunderstood you. When she applied in January, for what course did she apply?

Mr. Williamson: For the course in social work, or for graduate instruction leading to a degree in social work.

Judge Vaught: What you say is when she came in on the 14th of October, why she applied for an entirely different course.

Mr. Williamson: Took a pen and struck out "social work" on the afternoon of October 14, and inserted the word "sociology," an entirely different course, and then initialed it with her own initials on her application.

Judge Vaught: Is that recognized as a separate course in the University?

Mr. Williamson: It is. Some of the hours of instruction interlap; but it is a separate course, separate hours in the main.

Judge Murrah: You have made your position, Mr. Attorney General. The Court thinks that the first matter to be considered is whether or not the relief you seek is within the pleadings.

Mr. Marshall: Yes, sir.

Judge Murrah: And within the scope of the relief granted by this Court in its judgment.

You have made yourself clear on that point, that is, as I understand it, you say that this suit was brought as a class action, and that the plaintiff McLaurin is representative of the class of which this party, Wilson, is a member; being similarly situated she is entitled to the same relief. That is about right, isn't it?

Mr. Marshall: Yes, sir.

Judge Murrah: May it be agreed, or can it be agreed, that the statements on the part of the counsel for Wilson are the true facts and may be treated as received in evidence, and that the statement on the part of the Attorney General with respect to the position of the State, so far as it states the facts, are true and may be considered as part of the evidence.

Mr. Williamson: I see no objection to it.

Judge Murrah: Instead of suggesting that they are [fol. 116] true—that those will be the evidence in the case.

Mr. Williamson: We have no objection to that.

Mr. Marshall: Also the letters of the Attorney General.

Judge Murrah: Yes, and you of course want to introduce the litigation, such pertinent parts of the State court litigation, I assume, in support of your statement.

Mr. Williamson: I want, of course; in the record it to be noted that State litigation.

Judge Murrah: You have so stated, and if the parties agree, that will be taken as evidence.

Mr. Williamson: It is now pending.

Judge Murrah: I do not know whether this court would be aided by a more particular statement or more particular evidence of the litigation.

Mr. Williamson: As to the issues in the State litigation.

Judge Murrah: Yes. The issues there and the progress of the litigation. We deem it quite important, I think that to consider, whether or not this plaintiff's rights are being litigated in the State court. That being true we would certainly be most reluctant to interfere to grant any relief for that reason alone.

Mr. Marshall: I know that line of cases along that line, sir, and the question is that there are two ways, [fol. 117] of course, to meet it: One is to drop the State court case prior to final litigation, but on the other hand that is a law action, mandamus. Here we have an equity action and this court having taken over jurisdiction of the subject matter, that in this type of case this court for that reason is entitled to cover the subject matter of the case, which is the small group of six people that is involved in it, and for that reason only I believe that having taken jurisdiction of this particular subject matter that the court should retain jurisdiction until complete relief is given for the entire class.

Judge Murrah: The Court appreciates your position in that respect, but you also must admit that this court, sitting as a court of equity, should so fashion its decree with respect to the subject matter as to grant the relief and at the same time have it sufficiently flexible to accord to the State processes the dignity that they are entitled to.

Mr. Marshall: I think so, sir, but I might say if this point is to be decided, it cannot be decided on the narrow issue of McLaurin. I think that if this Court, I think that the Court's declaratory judgment was enough for the defendants in this case to understand what the law is, not as to McLaurin but as to all Negroes who stay in that category, and that having failed to do so in the McLaurin case, it seems to me that that [fol. 118] is a basis for our coming again to the court and saying that the declaratory judgment is not enough, we have to have clearer, more affirmative relief so that the officials of the University of Oklahoma, those who want to follow the law, will have the protection of this court, so that they can take Miss Wilson or anybody else who happens to fall in this peculiar category; and that is the reason that I believe Miss Wilson's case is a part of this action any way it's looked at, because it would be strange for the University officials to say that here are two people in almost the same position, and when we say "yes" to one, to the other we say "no."

I don't think this thing about October 14 — my mind that she applied in January, she didn't apply in October.

Judge Vaughn: If she applied for one course in January, now if she applies for another course in October —

Mr. Marshall: I think any student, sir, is entitled to change courses.

Judge Vaught: Well, of course she would be bound by the regulations in effect.

Mr. Marshall: There is no regulation that says you cannot change courses in the University of Oklahoma.

Judge Vaught: I don't know. I am just assuming that there is.

Mr. Marshall: To my mind the same rule applies in equity, that is the clean hands doctrine, and the only reason [fol. 119] that she was not in school on October 13th was that the defendants hadn't admitted her, and furthermore she was there on October 13 and in the presence of her counsel, who was there, I think, to try to keep them from pulling that type of thing.

Judge Vaught: Don't use the word "pulling that type of thing." This is a legal matter.

Mr. Marshall: Sir, I say quite seriously that we are dealing with fundamental rights, and to say that the mere fact that a person applies through a lawyer who says that she is ready to come, can she come, on the 13th, sir, then on the 14th she goes herself, and I do say, sir, I do use the word, the technicality that she goes one day late—

Judge Vaught: (Interposing) If she knew the printed regulations provide that the entrance would be to the 13th and none thereafter, why did she not comply with that?

Mr. Marshall: The reason she didn't comply, sir, is because she sent her lawyer to find out whether she was wasting her time in coming out there; and the law doesn't require anybody to do a vain act. The onus was placed on the defendants in January and this court has so held that they were wrong in not admitting her in January, and they kept her out from January until now, and then they come in the court room and say that she hasn't complied. She met all the lawful requirements and the only reason she [fol. 120] wasn't admitted was because of the rulings which have been declared invalid in this particular case as to McLaurin, so I think they are precluded from coming in and saying that she did not apply in time. She applied away ahead of time.

Mr. Williamson: I might make one observation. The January application was, as the court well remembers, without any notice, and without any warning. That whole

matter was presented to the Court. The January application resulted in a temporary turndown, so that she knew and felt the necessity of applying again, and did apply again, because of the fact that she realized and recognized that her first application had been denied, and she came on the 14th personally and applied.

Judge Murrah: Now Mr. Counsel—

Mr. Marshall: Yes, sir.

Judge Murrah: Treating this matter as a class action, which it is, and the plaintiff as the representative of that class, it is incumbent upon you, of course, fundamental, to show that any other party claiming to be a member of that class is similarly situated.

Mr. Marshall: Yes, sir.

Judge Murrah: Now have you done so?

Mr. Marshall: In this case, we will say the case is similarly situated. It was limited to the group who had applied, who were qualified and who had applied, and who had [fol. 121] been refused.

Judge Murrah: Now you have done so to your satisfaction?

Mr. Marshall: I think, sir, that we have shown that Miss Wilson—

Judge Murrah: That is the point I inquired about. I wanted to give you an opportunity to meet that issue and to advise you that, of course, you must do that before the Court could consider it at all.

Mr. Marshall: I agree, sir. It is my understanding that in the stipulation we agreed to in open court, it was to the effect that Miss Wilson was qualified in all respects other than race for admission when she applied in January of this year, and she was refused admission to the Graduate School solely because of her race or color pursuant to the statutes 455, 456 and 457, and for that reason she stood in the same position as McLaurin and stood in the class of qualified applicants who had applied who had been refused solely because of race or color in around about the same time.

Judge Murrah: Is it a fact that plaintiff McLaurin as of January 28, and sometime in September we will say made further application to the University officials for admission?

Mr. Marshall: Made application.

Judge Murrah: The real issue—I am not sure about that—but wasn't the real issue before us when we rendered [fol. 122] our judgment in this case, whether or not your plaintiff McLaurin, having made application for admission in January of '48 and again having made application in September sometime?

Mr. Marshall: Yes, sir.

Judge Murrah: I am not sure about that date, I am merely trying to illustrate the point, that the question remains whether it was not incumbent upon any other member of this class who claims to be similarly situated, to have made application to the proper authorities and submitted their credits and credentials during the enrollment period before September 23 or October 13 as the case might be. I don't know which is the critical date. The point I am trying to illustrate or call your attention to is, she must be in all respects similarly situated before you can have the prerequisites to seeking the relief we have granted your plaintiff McLaurin.

Mr. Marshall: I think so, but she did not reapply in September.

Judge Murrah: Now she did not, and conceding that, conceding that she did not reapply, put it this way, Mr. Reporter: Conceding that she did apply on January 28, 1948, that she was denied, tentatively denied admittance February 2, 1948, but did not thereafter pursue her application for admission until October 14, 1948; meanwhile plaintiff McLaurin reapplied to the University—while I don't [fol. 123] know the date, I know he reapplied and that date was pleaded and was material and was in the original hearing, because the reason it was, if you will recall at least one of the members of the Court expressed the view that in order to have a collision of issues, it was necessary for him to make normal application for admission in the University. I know I entertained that view, and when we met to render the final decision in this case, or that is the interlocutory decision, it was again stipulated that he had made application or an application was unnecessary, I believe that was, for him.

Mr. Marshall: Yes, if your Honor pleases.

Judge Murrah: The point is certainly in the case.

Mr. Marshall: I take this position and I have taken it all along, that especially in an equity case, whoever sets

up the chain of circumstances which create harm, I don't think that particular person can rely on anything in that chain of circumstances—I think under normal circumstances and not matters of evidence but as a matter of what actually happens when an application is made and not followed through, the student does not renew the application. The application sets in the files and it can be reactivated by just a letter, telephone call or anything. It can be reactivated but it is an old application that carries on through unless there has been a change in the rule, as to the type of application that is to be filed. Now the wrongdoing in this case [fol. 124] was the result solely of the defendants. They didn't let her in.

Judge Vaught: Could they have let her in legally in January?

Mr. Marshall: I think so, your Honor.

Judge Vaught: I don't think they could. There was a State statute. The Board of Regents has no power to declare an Act unconstitutional and before McLaurin was admitted it was necessary that there be either a decree of a court or a repeal by the legislative body before an administrative body could take action. They couldn't ignore the law. That was in a statute.

Mr. Marshall: All right, sir, I agree with that, but it does not change the position, I don't think, sir. My position is now either that the State of Oklahoma by statute or the defendant by administrative action denied to this plaintiff, or rather Miss Wilson, the protection of the Federal Constitution back in January of '48.

Judge Vaught: But that wouldn't be a matter that an administrative body could determine. It would be necessary either for the Legislature to repeal these laws, or for some court of competent jurisdiction by decree to hold them unconstitutional.

Mr. Marshall: So the statutes deprive Miss Wilson of her education.

Judge Vaught: Yes, sir.

[fol. 125] Mr. Marshall: State of Oklahoma.

Judge Vaught: Yes, sir.

Mr. Marshall: Now the State of Oklahoma, this time speaking through the Attorney General and the defendants, the Board of Regents, say that because of the fact that our State statutes deprived you of admission to the University

of Oklahoma back in January, you have to reapply in October, when she has done what any other students did. All the other students are in. They didn't have to reapply. This is not a normal situation that can be compared with the ordinary.

Judge Vaught: There was no occasion for the other application, but when she applied, under the laws of this state, neither the Board of Regents nor the faculty of the University of Oklahoma, could have permitted her to enter.

Mr. Marshall: Yes, sir.

Judge Vaught: There is a law against it, a statute. Well, an administrative body can't ignore State law. They have no power to declare it unconstitutional. They couldn't even go far enough to say that it conflicts with the Constitution of the United States. It is a matter either for a legislative body or for a court before they would have the power to admit. Now in the McLaurin case our reason for holding that he was entitled to equal educational facilities, was because our Constitution said so, and the laws of the State said so, and the Supreme Court of the United States [fol. 126] said so, but the State comes in and then admits we have no other place where equal facilities can be provided.

Mr. Marshall: Yes, sir.

Judge Vaught: So in that case, this court under that state of facts held that in so far as McLaurin was denied the right to enter the University, since there was no other place where he could acquire this education, that the segregation laws, so far as he was concerned in this particular case, were null and void, and unconstitutional, and that is as far as this court has gone.

Mr. Marshall: I think this court did recognize in the first hearing that this was a class action and it would apply to the group.

Judge Murrah: Conceding that, and this is the point about which I wish to inquire—conceding that this suit was brought as a class action and prosecuted as such, and that all persons similarly situated are entitled to the same relief, that is your contention?

Mr. Marshall: Yes, sir.

Judge Murrah: And you contend Miss Wilson—I don't know, I can't recall the full name, is, if similarly situated, entitled to the same relief that we have granted and which

you ask and for further relief you ask for the plaintiff McLaurin. When was her suit filed in the State court? [fol. 127] Mr. Marshall: June.

Judge Murrah: June of '48?

Mr. Marshall: Yes, sir.

Judge Murrah: And what relief did she seek?

Mr. Marshall: Mandamus in the District Court in Norman.

Judge Murrah: And she sought to mandamus the State authorities to admit her?

Mr. Marshall: Yes, sir.

Judge Murrah: To the course for which she made application on January 28, 1948?

Mr. Marshall: Yes, sir.

Judge Murrah: And on the ground asserted there, I assume, that the statutes which forbade her admission were unconstitutional and void?

Mr. Marshall: Yes, sir.

Judge Murrah: And they never had any right under the law to deny her admission?

Mr. Marshall: I might say this, sir, there was quite a bit of dispute as to whether or not the statutes were correctly—

Judge Murrah: (Interposing) You sought to compel her admission and on the ground she had a constitutional right?

Mr. Marshall: Statutes notwithstanding, your Honor.

[fol. 128] Judge Murrah: To pursue the course of study, the statutes to the contrary notwithstanding. Now the question in my mind and one which I must decide, is whether conceding, as you say, that this is a class action, and that all parties similarly situated are entitled to like relief, whether a party who makes application on January 28, 1948 for admission to pursue a course of study in the University of Oklahoma, which is not offered elsewhere in the State, and having been denied that admission tentatively on February 2, 1948, thereafter in June, 1948 brought an action in the State court to compel her admission on the ground that the State had no constitutional right to deprive her of admission to the course of study, and thereafter while pursuing that remedy in the State court refrain from making further application or further pursuing her application for admission, while at the same time the plaintiff McLaurin was relying solely upon the processes of this court for relief.

That is apparently as the facts are, whether she now stands in the same position, whether she is similarly situated, seems to me to be, as far as I am concerned, the paramount question, the dominant question in this case, the one that it is certainly incumbent upon you to show. We can't assume that she is similarly situated simply because she made application in January.

Mr. Marshall: I agree.

[fol. 129] Judge Murrah: I think the proof is conceded, of course, that she made application in January, 1948 and was denied in February. Now that is as far as the similarity goes except that she is still qualified.

Mr. Marshall: And that as I understand it, she has reapplied not later than October 14.

Judge Murrah: Yes, sir, reapplied for admission and denied, and then back to court and now in this court claiming relief in a class action, while admitting at the same time she has been pursuing the same remedy or substantially the same remedy in another forum with jurisdiction, with concurrent jurisdiction to grant relief.

Mr. Marshall: Judge Murrah, I was trying to leave that point to the last. That's tough.

Judge Murrah: Well, eventually we will have to get to it.

Mr. Marshall: That's tough. As I understand it, if this were a brand new action that she was filing, that is if I may for a minute forget about the State court.

Judge Murrah: Proceed as you wish.

Mr. Marshall: She reapplied on the 14th and came into this court and asked for an injunction to restrain them from holding her out, I think then we are up against a very real proposition.

Judge Murrah: Yes, sir.

[fol. 130] Mr. Marshall: Where this court has already said that State statute cannot deprive a person of equal protection, it seems to me that if a State statute falls, any rule and regulation of a university could fall also, and that unless it could be shown that it was a crime or something to admit a student one day late, I am accepting the Attorney General's point that she was one day late, recognize that she has already applied back in January, and she comes in one day late and because of that reason, credence is given to the rule and regulation of a school, when as a matter of fact statutes have been declared unconstitutional, applied

to my mind in an equity court, I think that an equity court has the power to even go so far as to ignore that rule, and I think that one day, neither wrecks nor helps any school for anybody.

Judge Vaught: Suppose, as has been stated here, that no one, no other students of any color were or would have been admitted after the 13th. Would you say that she didn't have equal privileges then with others?

Mr. Marshall: No, sir, she didn't have equal privileges because there are no other students in her category. There is no other student that was held out from January.

Judge Murrah: I fully appreciate that, Mr. Counsel.
[fol. 131] Mr. Marshall: But now it comes to the point whether—you see, it's not a question of comity, but as the courts have said, it is a question of law.

Judge Murrah: And if it is compelling law, it certainly will be a question of comity, and requiring a Federal equity court to stay its hand. It's been the policy of this court and must be the policy of this court to act only when all other processes have failed, and in that connection, be sensitive of those repeated admonishings down through the years so we not usurp vested jurisdiction of a State court, if we were to grant relief when she is seeking it in a State tribunal charged with responsibility equal with this court of interpreting and applying the constitutional laws of the United States.

Mr. Marshall: I think, sir, that—well, I think I can go this far, sir: That this is not only the law but I agree with it, and the only thing I said is what I said in the beginning, that if she were to come in here herself at this time, no question but that you pick your forum and you stay there until you exhaust your remedies—the only thing I am saying is that we have here a decision by this court which applies to McLaurin, who happened to pick this procedure, and we have other members of the class in the State court, and it was for that reason and that reason only of this court having once taken jurisdiction over the subject [fol. 132] matter and giving complete relief, that is the only exception, sir, that we claim, and we are not quarreling with the law on the other side.

Judge Murrah: We will hear you further at one-thirty.

Might the Court, let the Court suggest that the State court proceedings are certainly pertinent to consideration of the issues in this case, and not only the time of filing but the relief sought there, and the status of litigation there is pertinent. If you have that, if it is available, the Court would greatly appreciate it if you would tender it in evidence.

Mr. Williamson: On that point, your Honor, I confess I didn't know how far we were going to proceed in this.

Judge Murrah: That's all right.

Mr. Williamson: That is another lawsuit to us because it's pending in the State court. A case made was served on us some two or three weeks ago and the latter is lodged in the Supreme Court now. I didn't—

Mr. Marshall: (Interposing) It isn't lodged there.

Mr. Williamson: It is about to be, I will put it that way, will be.

Judge Murrah: No criticism of the Attorney General. You have been very diligent, no doubt about that.

[fol. 133] Mr. Williamson: I really think the matter is of sufficient importance that in all fairness we should have a day or two perhaps to file here with this court exhibits constituting the applicable portions of record in that case.

Judge Murrah: May I interrupt, Mr. Attorney General, the nature of the case has been stated. If that is the nature of the case, if those dates mentioned here on that record are correct, the Court doesn't need the actual exhibits of the pleadings.

Mr. Williamson: I misunderstood the Court. I thought the Court just now said that the Court did wish to be advised in detail about the case. I misunderstood you.

Judge Murrah: I did say that, surely did, but what I mean to say, sir, is if we are sufficiently advised as to the details, the case may be submitted, and we will render our decision forthwith.

Mr. Marshall: If your Honor pleases, any statement that the Attorney General makes about the case as it is pending we most certainly agree with it, sir, because we were in the case, and I mean we both understand exactly what it is, and if he will just make a statement or whatever your Honor agrees, we will agree with whatever he says.

Judge Murrah: We are not going to make the case for you. It is not our province to do so. If you are satisfied with

[fol. 134] the proof, both of you are satisfied with it, the Court certainly is.

Mr. Williamson: We are quite satisfied with the proof. It is just simply a case in mandamus where the decision went against her in the trial in the trial court, and she is appealing to the Supreme Court.

If your Honor please, may I interrupt just to this extent: There are two gentlemen here who are under subpoenas to bring all the records for the last three years of these Boards. May they be released?

Mr. Marshall: I am very sorry I didn't think about it before.

Judge Murrah: That's all right. Witnesses are excused from further attendance on this court. Any other witnesses subpoenaed here? All witnesses under agreement and all witnesses who have been subpoenaed to testify in these proceedings are excused from further attendance.

Judge Vaught: Let me ask you, did you gentlemen desire to orally argue this case or do you want to submit a brief?

Mr. Williamson: I would much prefer to submit briefs. We have rather tried to hurry each other and tried to get through the case.

Judge Murrah: If you wish to argue it, we think that perhaps we will give a full opportunity to argue the case orally, and we shall endeavor to arrive at a conclusion forth-[fol. 135] with, because the matter of course is very familiar to us, and we have studied it. It is just your pleasure.

Mr. Marshall: If your Honor pleases, I made my position clear in the beginning, and I don't know about the Attorney General, but if I could have just five minutes to cite one case, that will be all the argument I would want.

Judge Murrah: You may proceed not only five minutes but thirty minutes if you wish.

Mr. Marshall: No, sir, not thirty minutes.

If your Honor pleases, I think that it is clear that the issue in this case has narrowed down, as to the McLaurin case, is narrowed down to the question as to whether or not the Board of Regents of the University of Oklahoma, in the absence of any State statutes specifically requiring segregation of the races, has inherent power to segregate. I think the only issue left in the case, and the law on that case is summed up in—if I can get it, the Westminster School

District vs. Mendez. It's a Ninth Circuit Case in 161 Federal 2d 774, decided last year.

Judge Vaught: What page number?

Mr. Marshall: 774, sir.

Judge Murrah: 161?

Mr. Marshall: 161 2d. It's a question of segregation of Mexican children in California, and the defendant school board put up several defenses. One was language [fol. 136] difficulties, that the Mexican children all spoke Spanish, but it developed in the trial in the lower court, that the real question was the segregation of Mexicans because they were Mexicans. There were some side issues in the case as to treaties between Mexico and the United States, which always come up in these Mexican cases, but the basic issues in the Circuit Court of Appeals was narrowed to the point that in the absence of a statute requiring segregation, that the particular school board did not have authority to segregate, that such segregation was in violation of the Fourteenth Amendment. It is not new law. There are cases, some are cited in the case itself and there are others, Ward versus Flood, a California case.

Judge Vaught: It's their contention we don't contend that isn't the law.

Mr. Marshall: Well, sir, if that be the facts, then the State has no right to segregate McLaurin.

Judge Vaught: Where we differ is that your contention is that there are no segregation laws in Oklahoma.

Mr. Marshall: That apply to the University.

Judge Vaught: Yes, sir. We, this court hasn't held that. This court has held that the laws of Oklahoma, the State not having provided equal facilities anywhere else, do not prevent the admission of this man to the University, since that's the only place he can get it.

[fol. 137] Mr. Marshall: If your Honor pleases, the statute ruled on makes it a crime to teach white and colored pupils in the same school. That is what the statute says. It is no qualification of that statute. He is being taught in the same school, so that statute cannot apply.

Judge Vaught: That is the part that was held was void as far as it applied to him.

Mr. Marshall: The only other statute in the State of Oklahoma that requires segregation is a provision of the Oklahoma Constitution which applies to public schools and

has been construed several times as not applying to universities, not in Oklahoma but in other states, as not applying to universities, and the school, the Board of Regents of the University of Oklahoma, the letters from the Attorney General, make it clear, which are in evidence, are operating on the inherent authority of that Board to set up segregation, and that these cases all say that in the absence of State statute, the Board does not have the right to segregate.

The other point is that—

Judge Murrah: (Interposing) Before you leave that, what about the provision of the Constitution of the State?

Mr. Marshall: It says public schools, and there are cases, if your Honor is interested, that I can get.

Judge Murrah: I am not interested except that [fol. 138] thought occurred to me. It hasn't been mentioned anywhere either in our Judgment or in argument here.

Mr. Marshall: This litigation has been going on, not this particular case, I don't know, sir, but I think the Attorney General, we agreed away back, that that statute did not apply to universities.

Judge Murrah: That is, this provision in the Constitution.

Mr. Marshall: It means public schools and does not mean universities. There are now cases in other states, and the question first came up in v. University of Maryland. That is the first case that came up, and it's been on the fringes of each one of these cases, and there has been no question that in the absence of a specific statement including "universities"—the only statutes that I know of in the State of Oklahoma are those which are now being, the schools are now operating under.

Judge Murrah: A State constitutional inhibition has no application to these facts?

Mr. Marshall: No, sir, and that the State criminal statutes have no application, obviously. They say that it is a crime to teach in the same school, being no statute, they are acting on their own inherent authority, which they don't have.

Judge Murrah: I think that does not quite answer [fol. 139] the question as far as we are concerned. Conceding now that they have no inherent authority as you state to administratively segregate, that would be what we

are dealing with, the question yet remains whether or not it is of concern to this court.

Mr. Marshall: Well, sir, the Westminster case is the first case that passed on that point.

Judge Murrah: I will certainly be interested to know, and my mind is open on the matter, but this is the question, it seems to me—which is undecided in my mind—and that is, conceding the lack of authority to segregate, how it is our concern unless the action amounts to a deprivation of equal protection of the law. We don't supervise the University of Oklahoma. We don't supervise the State action, unless this State action constitutes an infraction of the equal protection of the law. Now I may say to myself, "Well, they of course have no right to do that, they are doing things that I am satisfied are unauthorized under State law," but I am sitting here as a court, the Federal court, and I don't dip my finger into it unless there is a collision with the Federal law of which I am the judge.

Mr. Marshall: I am mistaken about the Westminster case. There is a lower District Court case in Texas that was issued about June of this year on the Mexican question, so that those are the only Federal cases.

Judge Murrah: What is that case?

[fol. 140] Mr. Marshall: I will have to get it, sir.

Judge Murrah: What did the Ninth Circuit say?

Mr. Marshall: The last part of this opinion is to my mind the important part. It cites all of the segregation cases, Plessy v. Ferguson and all of those, and then points out, "In the first place we are aware of no authority justifying any segregation fiat by an administrative or executive decree, as every case cited to us is based upon legislative act. The segregation in this case is without legislative support and comes into fatal collision with the legislation of the State," talking about the other side.

Then they proceed to hold that it is a violation of the Fourteenth Amendment, and they use the Screws case and a number of others in this special concurring opinion. That goes back and takes in the Snowden case and the Screws case, but it definitely declared it a violation of the Fourteenth Amendment. The position that we take on these is that classification, when examined under the Fourteenth Amendment, unless based—and there is no dispute on those cases—unless based on a rational basis connected

with the purpose of the classification, violates the Fourteenth Amendment. However, all of those cases show that the plaintiff, the complaining party, actually has lost something that you can put your hand on, as a result of that classification. We take the position as to the McLaurin case [fol. 141] that McLaurin is losing something, what he is particularly losing is by being put in a situation of being a leper, or something wrong with him to exclude him from a room. It interferes with his ability to study. It would interfere with mine or I think it would interfere with anybody's. That takes something away from him.

Therefore the Court has a right to look at the classification, and these defendants have not put on one piece of testimony to show a basis for that classification. No theory has been produced to this Court, evidence or otherwise, justifying this classification, so it stands as a classification without justification. It is a racial classification which both the Chief Justice and Mr. Justice Murphy here in a case say that classifications on the basis of race are odious. Of course they were speaking there of the Fifth Amendment, Japanese cases from California. There were about three of them, and at the same time it was repeated in there that they were odious, that is, these racial distinctions, and we think in this case that so far as I am concerned it is the first time that, the true result of segregation laws is apparent. You take one person. You don't put him in with a whole lot of other people, you don't segregate that group from another group and not put any bad opinion on either group—that's not true in this case. Here we take one man and put him on the outside and let him peep in from the outside, that the purpose of that segregation is not to [fol. 142] maintain separation of the races, the purpose of segregation is to humiliate him. To humiliate, maybe is not enough for a court to pass upon, but when the humiliation is coupled up with a frame of mind that will prevent that man from getting the same thing that everybody else gets, it most certainly is the type of classification that comes within the regular classification cases in the 14th Amendment.

Judge Murrah: In other words, to epitomize your argument, it is to the effect that the segregation as shown by these facts is humiliating and so odious and so humiliating

as to deprive him of the equal protection of the law or equal facilities.

Mr. Marshall: Yes, sir.

Judge Murrah: Or equal facilities, which in turn deprive him of equal protection of the law.

Mr. Marshall: Yes, sir.

Judge Murrah: Gentlemen, do you wish to add something at this time, or would you prefer to brief the matter, what is your pleasure about it?

Mr. Williamson: I should like to do a little of both, if your Honor please. I'd like to make about two oral observations, and at the conclusion of which I would pray the Court for a day or two or a few days to brief. Now I would like to refer for a moment to our book here, jointly used. Frankly, I will say to the Court that I personally haven't [fol. 143] read this case but my associate has during the little interim here, and I desire to point out to the Court that this case—

Judge Murrah: Had you seen the authority until today?

Mr. Williamson: I had not seen it today, but Mr. Hansen during the moments he had available, has checked into it and we find that, and call the Court's attention to the fact, that this of course is a construction of the statutory law of California and constitutional law of California, upon a situation, a factual situation entirely different from the McLaurin case in this: That in California they sought to segregate the Mexican, and they segregated the Mexican children not by giving them benches in the same classroom listening to the same professors, visiting in the interior between classes with the other students not at all—they put them way over in another building and at another location, different students, different hours, perhaps, of study, a complete physical segregation.

There is no such thing in the McLaurin case. It is just vastly different. Construction of California laws.

One other observation; I am sure the Court will take cognizance and I'd like, of course, permission to recite in my brief, to call the Court's attention to the Oklahoma case of Rheam versus Board of Regents, where the Supreme Court of Oklahoma has laid down the law that the Board [fol. 144] of Regents of the University of Oklahoma has the implied power to do everything necessary and convenient to accomplish the objects for which that school was

founded and which is not prohibited either expressly or impliedly by law. And with that final observation—

Judge Broadus: What is that citation, General?

Mr. Williamson: 161 Oklahoma 268.

I also call the Court's attention in conclusion to the decision of the State Supreme Court of Oklahoma in the first Sipuel case. Of course the second Sipuel case the Court will remember, was an application or action filed originally in the Supreme Court of the United States. In this Supreme Court of Oklahoma, in this case in an Opinion January 17, 1948, in construing 190 Pacific 2d 437, in construing the Constitution and statutes, takes issue with my friend the lawyer from New York there when he says that these three statutes having fallen there is nothing left on which to base segregation. Well, the Supreme Court of Oklahoma, and I spoke about that in the early portion of this case—there was some little difference of opinion probably between we lawyers, and the Court itself, our State court says this, it says "Policy established by Constitution and statutes is to segregate white and Negro races for purpose of education at institutions of higher learning."

In our brief we will develop the fact that there [fol. 145] are two sections, two articles in the Oklahoma Constitution, one of them is Article 13, which provides for what practically all lawyers in all courts agree is the method and plan and constitutional provision for common school education in Oklahoma. That is Article 13 in the Constitution, but Article 23 of the Constitution, Section 11, I believe it is, says that wherever in this Constitution the word "colored person or Negro" is used, that it means all and every age of person of that race. Now that is not the exact wording. I am recalling it from memory.

We would like leave to cite those and other applicable matters that we deem applicable in a brief to be filed with all expedition. We don't desire to delay it at all.

Judge Murrah: Just a moment. Now the Court understands that, in order that counsel may understand it: The questions presented to us are first, whether or not the plaintiff McLaurin has on the facts developed today been denied and is being denied the equal protection of the law. You agree to that.

Now with respect to Wilson, the Court is of the opinion that she comes within the scope of the pleadings, so you will

have no precedural problems of pleadings. The narrow question is whether or not she is similarly situated. Do you understand that?

Mr. Marshall: Yes, sir.

[fol. 146] Judge Murrah: Is that your understanding about it? Well, of course you do not agree. You think that she doesn't come within the scope of the pleadings or you suggest she does not.

Mr. Williamson: That's right.

May I observe to the Court that we are not prepared to go into the formal hearing of the Mauderie Wilson matter without further pleadings being filed.

Judge Murrah: Well, I understand that the matter is squarely presented to us.

Mr. Williamson: I understand, but I say that it is our position in the case, the Court understands me, in case the ruling is against us, I want the record there sure.

Judge Murrah: Your protest is recorded but we will decide this question first: Whether or not McLaurin has on these facts been deprived of the equal protection of law, and second: Whether or not Wilson is similarly situated, therefore entitled to the same relief.

Now you have the privilege of filing a brief if you wish or memorandum authorities. We hope that you will make it very brief. Primarily we are interested in authorities. We understand your position.

Mr. Marshall: If your Honor pleases, if it is all right with the Attorney General, since we are the moving parties, may I be permitted to answer his brief when he files [fol. 147] his, because anything we said in our brief will be what I have already said.

Judge Murrah: We thought you would exchange it and expedite the matter in five days, give you five days, both parties, to file whatever they wish to file. If we wait to answer it, it might be thirty days.

Mr. Marshall: We agree with the five days, sir.

Judge Murrah: Five days.

Mr. Williamson: Quite all right.

Judge Murrah: File anything you wish to file, but we hope you will keep it short.

Mr. Williamson: Our briefs will cross in the mail.

Judge Murrah: And if you wish to add surrebuttal the next day, that will be permissible.

Would it be necessary to convene the Court or can the Court file its Judgment? If we do so it will be necessary to give notice.

Mr. Williamson: We would think the matter ought to stand submitted at this time subject to briefing and decision.

Mr. Marshall: If there be any technicalities we waive them.

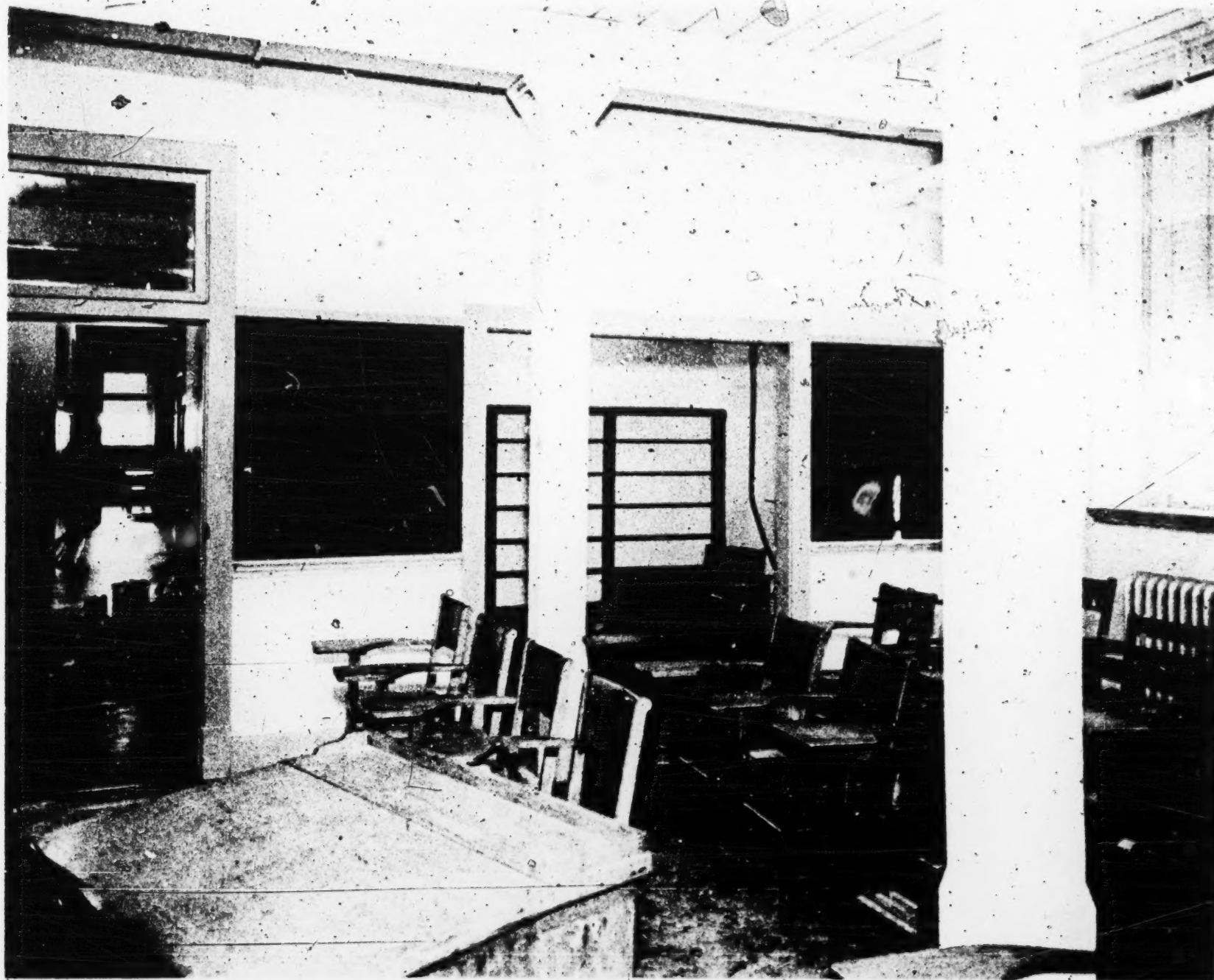
Judge Murrah: Well, there are no technicalities that except unless you think it is necessary for us to formally convene.

[fol. 148-149] Mr. Marshall: No, sir.

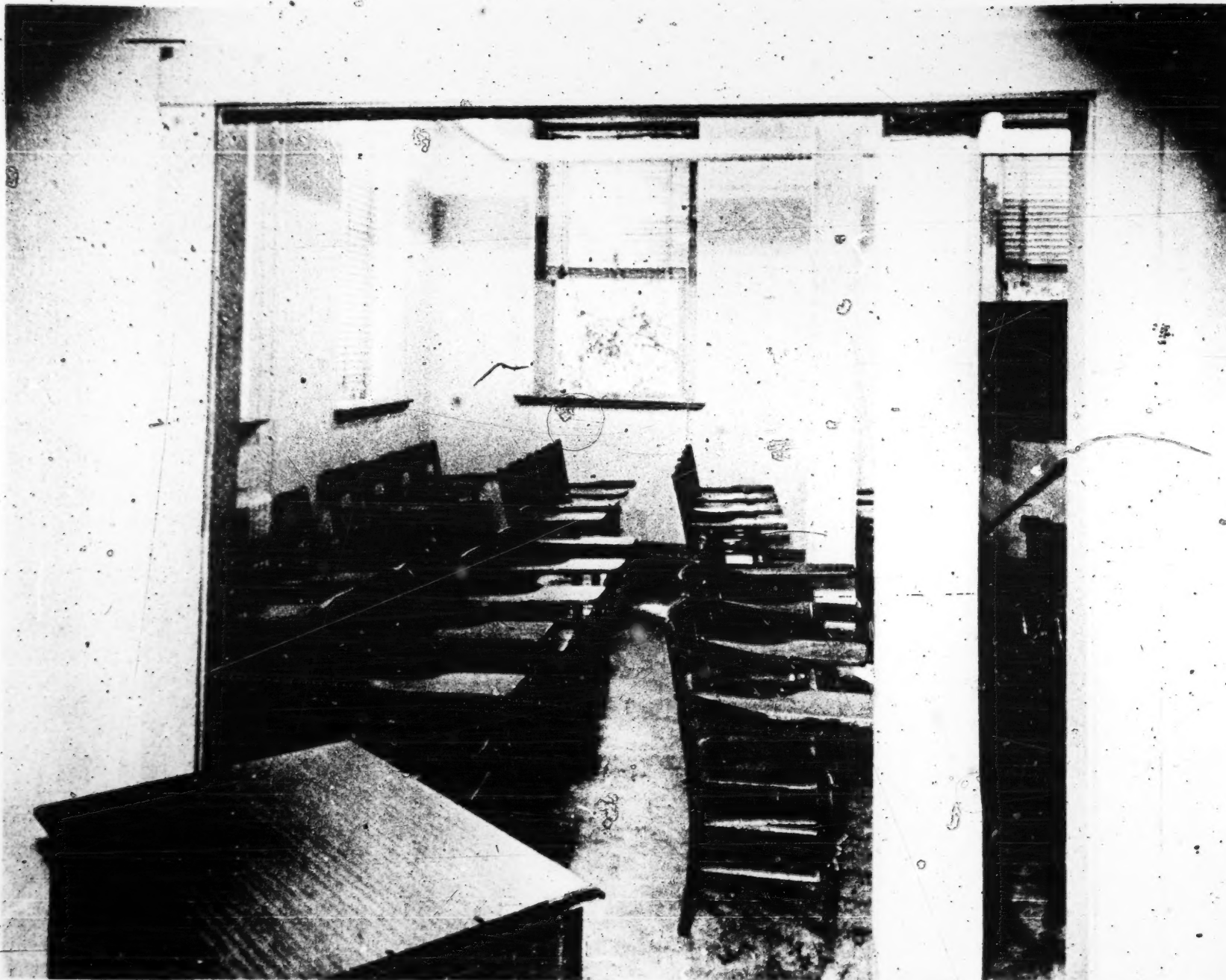
Judge Murrah: This matter is submitted and this Court is at recess.

(Whereupon, the proceedings in the above-styled case were adjourned.)

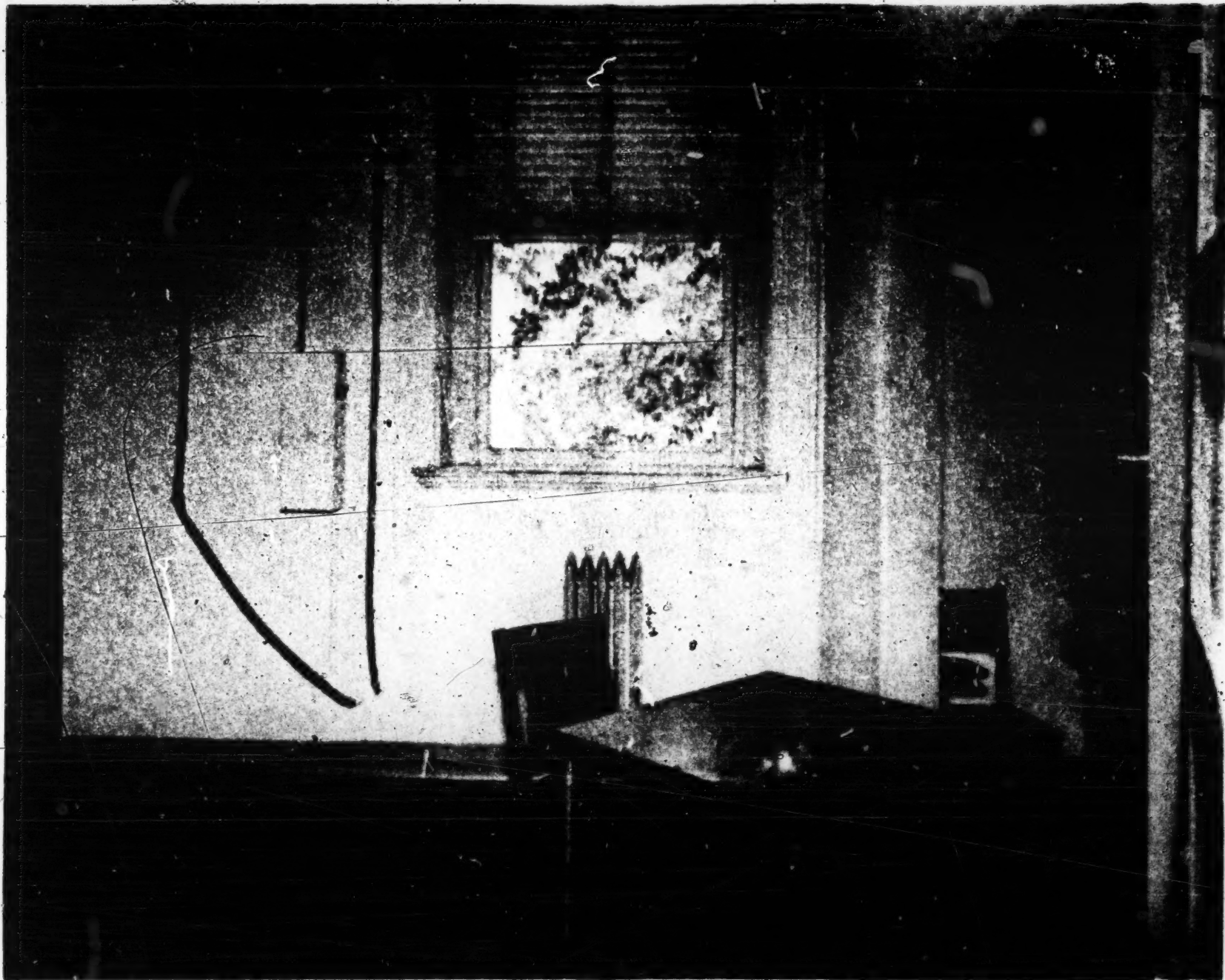
PLAINTIFF'S EXHIBIT 1



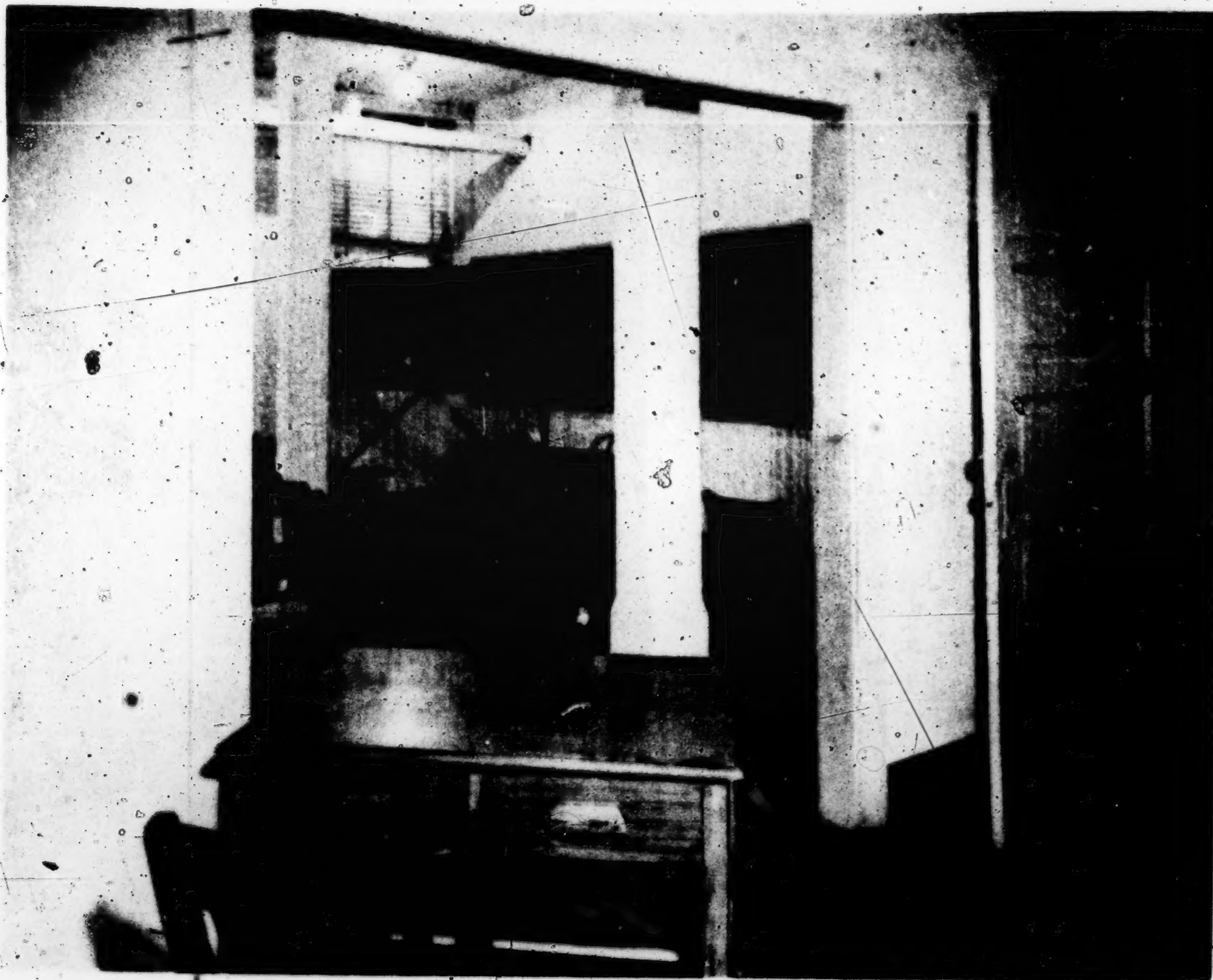
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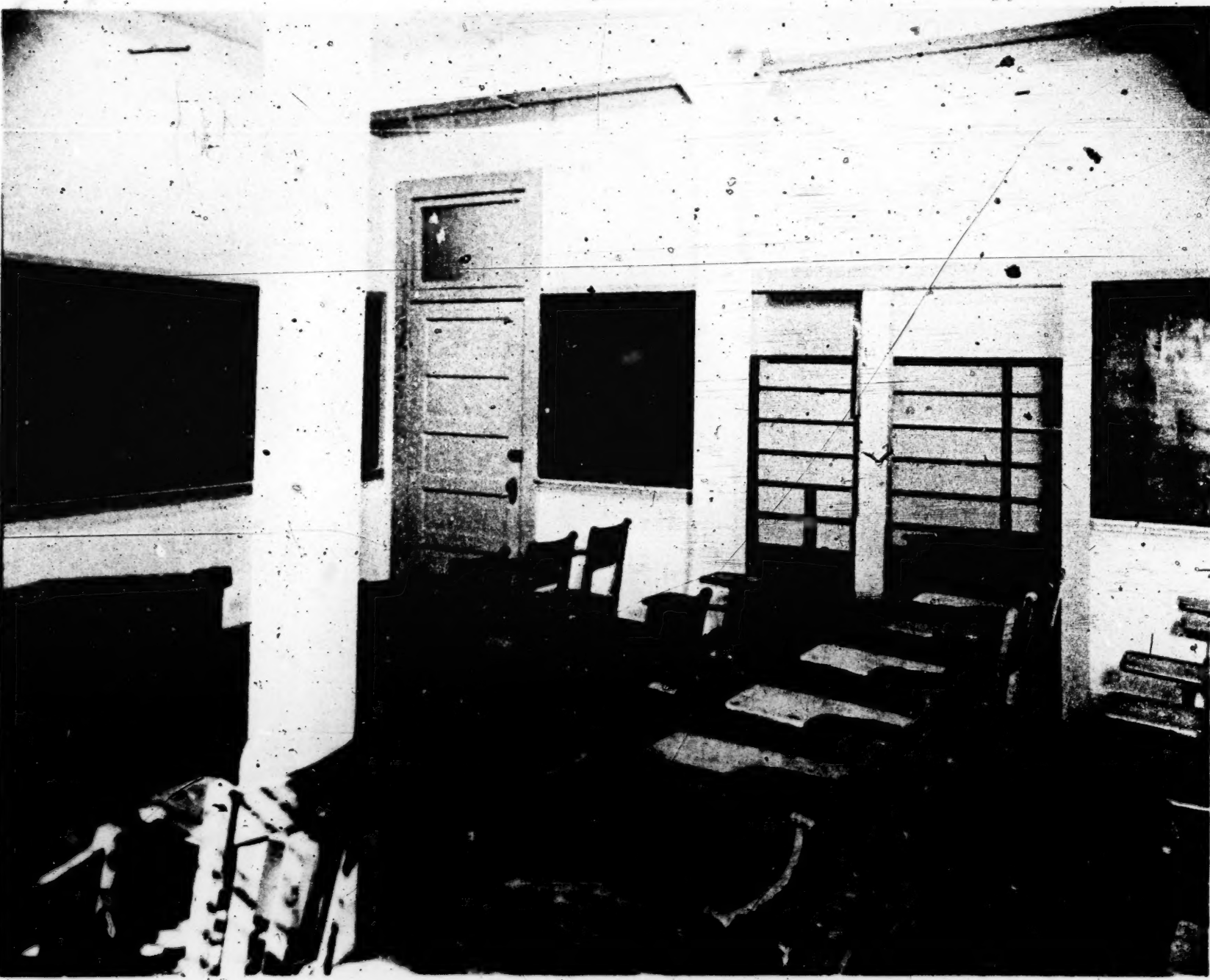
PLAINTIFF'S EXHIBIT 3



PLAINTIFF'S EXHIBIT 4



PLAINTIFF'S EXHIBIT 5



[fol. 155]

PLAINTIFF'S EXHIBIT 6

From the minutes of a special meeting of the Regents of the University of Oklahoma held on Sunday, Oct. 10, 1948.

Regent Emery: "I now offer the following motion and move its adoption: 'That the Board of Regents of the University of Oklahoma authorize and direct the President of the University, and the appropriate officials of the University, to grant the application for admission to the Graduate College of G. W. McLaurin in time for Mr. McLaurin to enroll at the beginning of the term, under such rules and regulations as to segregation as the President of the University shall consider to afford to Mr. G. W. McLaurin substantially equal educational opportunities as are afforded to other persons seeking the same education in the Graduate College and that the President of the University promulgate such regulations'."

A roll call vote was asked for with the following voting AYE:

Regent Emery
Regent Shepler
Regent White
Regent Benedum
Regent Deacon
Regent McBride

Absent:

Regent Noble

[fol. 156]

PLAINTIFF'S EXHIBIT 7

THE ATTORNEY GENERAL OF OKLAHOMA
Oklahoma City, Okla.

October 6, 1948

Honorable G. L. Cross, President
University of Oklahoma
Norman, Oklahoma

Dear Sir:

Your telegram of Saturday afternoon, October 2 (delivered Monday morning), reads as follows:

"It is the legal obligation of the Board of Regents to admit McLaurin in event he presents himself for admission to graduate college of University of Oklahoma next week. Urgency of the matter necessitates immediate action and your opinion by Wednesday,

October 6 by 3 P.M. when Board of Regents reconvenes will be appreciated.

G. L. CROSS, President."

On September 29, 1948, and after a prior hearing thereon, the three-judge federal court of the Western District of Oklahoma has convened in the McLaurin case (speaking through Circuit Judge Murrah), rendered an oral declaratory judgment upon the law and facts in the McLaurin case, the pertinent part thereof reading as follows:

"the Court holds that the plaintiff in this case is * * * entitled to secure post graduate education in this State by a state institution. The Court further holds that to this time he has been denied that right, although application has been duly made therefor during the same period these particular educational facilities have been afforded by the State to other groups.

"The Court further holds that the State is under the constitutional duty to provide this plaintiff with the education he seeks as soon as it does for applicants of any other group. * * *

"The Court further holds that *in so far as* the statutes of the State of Oklahoma drawn in issue here deny or deprive this plaintiff of admission to the University of Oklahoma for the purpose of pursuing the [fol. 157] course he seeks to pursue there, [said statutes] are unconstitutional and void. Now that does not mean, of course that these laws cannot be made to stand, with the power of the State to provide equal segregated facilities, provided that those facilities are equal and that they are afforded as soon as they are afforded to any other group. * * *

"* * * we sit as a court of equity with power to fashion our decree in accordance with right and justice under the law. Accordingly, we refrain at this time from issuing or granting injunctive relief on the assumption that the State will follow the law in the constitutional mandate.

"We retain jurisdiction of this case, however, with full power to issue such further orders and decrees as may be deemed necessary and proper to secure this plaintiff the equal protection of the laws, which, translated into terms of this lawsuit, means * * * equal educational facilities. We therefore recess this case at

this time, with the understanding that either party may apply for further relief consistently with the pleadings in the case. * * *

"We will prepare a formal judgment and decree in accordance with this forthwith, and within the next few days, but that is the judgment of this Court, and judgment entered as of this date."

Referring to your inquiry as to "... the legal obligation of the Board of Regents to admit McLaurin in event he presents himself for admission to graduate college of University of Oklahoma next week," your attention is directed to an opinion of this office dated October 2, 1948, based on the McLaurin case ruling by the three-judge court, and directed to Governor Roy J. Turner, wherein (among other things) it was held as follows (referring to McLaurin's application for admission to the University of Oklahoma for scholastic work leading to a doctorate degree—admittedly, not offered as a course of Langston University):

- "(1) Plaintiff [McLaurin] will be entitled to enroll in said classes in said graduate courses of instruction, in which courses he will be entitled to remain on the *same scholastic basis* as other students until [fol. 158] similar classes in substantially equal courses of instruction are established and ready to function at Langston University; or
- "(2) The University of Oklahoma *will not be entitled* to enroll any applicant of any group in said classes until substantially equal courses of instruction are established and ready to function at Langston University."

We arrive at the conclusion above expressed as a result of the ruling of said three-judge court hereinabove set forth and more particularly, upon consideration of the following paragraph of said ruling:

"The Court further holds that in so far as the statutes of the State of Oklahoma drawn in issue here deny or deprive this plaintiff of admission to the University of Oklahoma for the purpose of pursuing the course he seeks to pursue there, are unconstitutional and void. Now that does not mean, of course, that these laws cannot be made to stand, with the power of the State to provide equal segregated facilities, provided

that those facilities are equal and that they are afforded as soon as they are afforded to any other group."

While this language follows the logic and purport of the United States Supreme Court decision in the Sipuel case, yet it stands as the first time that any court has directly declared the penal statutes (70 O.S. 1941: §§ 455, 456 and 457) prohibiting scholastic intermixture in higher education to be unconstitutional and void. Also, it is the first instance where a court has passed upon the precise question of a negro plaintiff's admission to a state supported college, using *the University of Oklahoma*, by name. Thus, we have by judicial decree, a voiding—a striking down—of the state's traditional policy of scholastic segregation in higher education, directly applied to entrance of plaintiff, McLaurin, to the University of Oklahoma.

While the injunctive relief was (for the time being) withheld, yet the decision notes the assumption of the court "that the State will follow the law"

So that now, the duty and policy of the Regents of the University of Oklahoma is for the first time laid down by order of court, directed to the regents, and premised upon the assumption that they, as agents of the state, will follow the law. This is, of course, an entirely different situation from any that the Board of Regents has faced in the various recurring angles of the segregation litigation with [fol. 159] which the state has been beset, in and during the past year, or more. And the fact should not be here lost sight of, that colored applicants generally are not privileged as a class to enter any and all graduate schools for higher instruction (not provided at Langston); but *only* those who have heretofore made application at Oklahoma University for courses similar to the McLaurin application.

Now, directing your attention for the moment to the concluding paragraph of the judgment of the three-judge court, as follows:

"We will prepare a formal judgment and decree in accordance with this forthwith, and within the next few days, but that is the judgment of this Court, and judgment entered as of this date."

It is the considered judgment of the Attorney General that the Regents of the University of Oklahoma would be excused in withholding (should they so desire) final judg-

ment on such course as they may determine to pursue until they have had opportunity to receive, study and compare the formal judgment and decree of the court herein. Of course, it is understood that this will be forthcoming in a matter of a very few days.

In the opinion of the Attorney General, the above paragraphs numbered 1 and 2, together with the above-stated observation upon temporary delay pending receipt of a formal decree, constitute the bounds and limits within which the Regents of Oklahoma University are required to chart a course of action in the McLaurin case; this, by virtue of the clear and concise language in the court's judgment, as above quoted. And upon this point we may here observe that in our opinion, if the Regents of Oklahoma University should not see fit to follow one of the alternatives above set forth, then in that event and upon application therefor by McLaurin, the writ of injunction, as prayed for, would by said court be issued.

Consequently, the Attorney General holds that the Regents of Oklahoma University will have to determine, in the exercise of their sound discretion, which of the two alternatives above set forth they will follow, or whether they will by inaction put themselves in the position of inviting compulsion of the writ against them.

In this connection you may be interested in knowing that one of the questions in Governor Turner's recent (October 1, 1948) inquiry to this office was as follows:

[fol. 160] -2. "I would like to be further advised as to the authority of the Board of Regents of the University of Oklahoma to enact rules and regulations that would offer instruction to McLaurin in accordance with the Federal Court's ruling, but would preserve, in so far as we may do so, segregated instruction at the University."

Upon this point, we advised the Governor (in our October 2 opinion) as follows:

"In reply to your second question, you are advised that Section 8, Article 13 of our State Constitution, adopted July 11, 1944, provides that the 'government of the University of Oklahoma shall be vested' in the Board of Regents of the University of Oklahoma; Chapter 32, Title 70, page 546, Oklahoma Session Laws

1947, vitalizes or amplifies said constitutional amendment. Section 3 of said act provides that said board

'shall constitute a body corporate, by the name of "Regents of the University of Oklahoma", and shall possess all the powers necessary or convenient to accomplish the objectives and perform the duties prescribed by law.'

and Section 5 of said act provides that the board 'shall enact rules for the government of the University and all its branches.'

"The Attorney General has been unable to locate any decision expressly holding that the Governing board of an educational institution, such as the Board of Regents of the University of Oklahoma, has authority to enact a rule or regulation such as is referred to by you, or whether same would or would not violate the equal protection clause of the Fourteenth Amendment of the Constitution of the United States. However, during the oral argument before the Supreme Court of the United States in the Sipuel case, supra, Justice Frankfurter suggested from the bench three ways in which Oklahoma could comply in said case with said clause. In this connection we quote from a news story relating to the Sipuel case in the [fol. 161] Daily Oklahoman of January 14, 1948, wherein under the headline 'STATE EXPECTS EARLY REVIEW OF NEGRO CASE,' it is in part stated:

'While the case was being argued before the high bench last week, Justice Felix Frankfurter suggested three ways in which Oklahoma could handle the matter:

'Let Mrs. Fisher attend law school classes with white students.

'Let her into the law school on a segregation basis, giving her a private teacher.

'Admit her according to Plan No. 1 or No. 2, but only until a Negro state law school is established.'

"Inasmuch as no other member of said court expressed a different view, we assume that the suggestions made by Justice Frankfurter represented not only his personal views but those of the Court.

"The Attorney General is, therefore, of the opinion that the Board of Regents of the University of Oklahoma is authorized to enact rules and regulations such as are referred to by you, and that same would not violate said equal protection clause nor the ruling of the federal district court herein."

A copy of said opinion to Governor Turner is herewith enclosed.

Most Respectfully,

Attorney General

MQW:LW

Enc.

Approved by Attorney General 10-6-48 LW

[fol. 162] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed Jan. 18, 1949

Now comes, G. W. McLaurin, plaintiff in the above-entitled cause, by his attorneys and respectfully shows that:

On the 22d day of November, 1948 in the above-entitled cause the United States District Court for the Western District of Oklahoma, convened in a three-judge court pursuant to Title 28, United States Code, sections 2281 and 2284, rendered a judgment against plaintiff and in favor of defendants by which judgment the court denied plaintiff the relief requested and refused to enjoin the enforcement of certain statutes of the State of Oklahoma and a certain order of the Board of Regents of the University of Oklahoma acting as a state board on the ground that said statutes and order were unconstitutional in that they were in violation of the Constitution of the United States.

On the 5th day of August, 1948, plaintiff filed in the United States District Court for the Western District of Oklahoma a complaint seeking the convening of a three-judge court as required by the then existing section 266 of the Judicial Code for the purpose of securing a preliminary injunction and a permanent injunction against the Oklahoma State Regents for Higher Education, the Board of Regents of the University of Oklahoma and the administrative officers of the University of Oklahoma restraining them from enforcing sections 455-457 of the Oklahoma statutes of 1941. The complaint alleged that plaintiff and other qualified Negro applicants were excluded from admis-

sion to courses of study offered only at the graduate schools of the University of Oklahoma pursuant to the above statutes and orders of the defendants issued thereunder. A preliminary and a permanent injunction against the enforcement of these statutes and orders were sought on the grounds that said statutes and orders denied to the plaintiff and others similarly situated rights and liberties guaranteed by the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution and sections 41 and 43 of Title 8 of the United States Code.

On the 6th day of October, 1948, the three-judge court filed a journal entry that "it is ordered and decreed that insofar as sections 455, 456 and 457, 70 O.S. 1941, are sought [fol. 164] to be applied and enforced in this particular case, they are unconstitutional and unenforceable." The court expressly refrained from issuing and granting any injunctive relief but retained jurisdiction over the subject matter for entering any further orders as may be deemed proper.

On the 7th day of October, 1948 plaintiff filed a motion for further relief alleging that despite the prior ruling of the court, plaintiff had again been denied admission to the graduate school of the University of Oklahoma and requested that the court enter an order requiring the defendants to admit plaintiff "to the graduate school of the University of Oklahoma for the purpose of taking courses leading to a doctor's degree in education, subject only to the same rules and regulations which apply to other students in said school."

At this hearing there was placed in issue the order of the defendant Board of Regents of the University of Oklahoma ordering that the plaintiff be admitted only on a basis of segregation solely because of his race. The plaintiff challenged the order as unconstitutional and the defendants rested upon the validity of such order as within the power of the Board of Regents of the University of Oklahoma as a state board.

At the hearing on said motion for further relief, the essential facts were agreed upon by counsel for both parties and, in addition, plaintiff testified as to the conditions under which he was admitted to the University of Oklahoma subsequent to the filing of the motion for further relief.

[fol. 165] On the 22d day of November, 1948, the three-judge court issued Findings of Fact, Conclusions of Law and Journal Entry. In the Conclusions of Law, the Court held:

a. That the United States Constitution "does not authorize us to obliterate social or racial distinctions which the State has traditionally recognized as a basis for classification for purposes of education and other public ministrations. The Fourteenth Amendment does not abolish distinctions based upon race or color, nor was it intended to enforce social equality between classes and races."

b. "It is the duty of this court to honor the public policy of the State in matters relating to its internal social affairs quite as much as it is our duty to vindicate the supreme law of the land."

c. "The Oklahoma statutes held unenforceable in the previous order of this court have not been stripped of their vitality to express the public policy of the State in respect to matters of social concern."

d. "We conclude therefore that the classification, based upon racial distinctions, as recognized and enforced by the regulations of the University of Oklahoma, rests upon a reasonable basis, having its foundation in the public policy of the State, and does not therefore operate to deprive this plaintiff of the equal protection of the laws."

The journal entry entered by the Court denied the relief prayed for, dismissed the complaint of plaintiff and entered judgment for the defendants.

In the record and proceedings and in the rendition of said judgment there was drawn in question by plaintiff [fol. 166] herein the constitutionality of the above-stated statutes of the State of Oklahoma and the above-stated order of the Board of Regents of the University of Oklahoma acting as a state board. Plaintiff contended that said statutes and order herein are in contravention of and repugnant to the equal protection and due process clauses of the Constitution and Sections 41 and 43 of Title 8 of the United States Code. The decision and judgment of the United States District Court for the Western District of Oklahoma upheld the constitutionality of said statutes and order as against the rights set up and claimed by plaintiff herein under said clauses of the Constitution of the United States all of which is both apparent in the record and

proceedings of the cause and rendition of said decision and judgment.

Wherefore, plaintiff, G. W. McLaurin, feeling aggrieved by the judgment of the Court entered herein on the 22d day of November, 1948, for the reasons set forth in his assignment of errors which is filed herewith, hereby prays an appeal from such judgment to the Supreme Court of the United States and further prays that an order be entered fixing the amount of bond and security to be given by the plaintiff as appellant and conditioned as the law directs and that a transcript of the record on appeal be certified and sent to the Supreme Court of the United States.

Respectfully submitted, Amos T. Hall, 107½ N. Greenwood Avenue, Tulsa, Oklahoma; Thurgood Marshall, 20 West 40th Street, New York, 18, N. Y., Attorneys for Plaintiff.

Robert L. Carter, Constance Baker Motley, Marian W. Perry, Franklin H. Williams, 20 West 40 Street, New York, 18, N. Y., of Counsel.

[fol. 167]

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed Jan. 18, 1949

Plaintiff files the following assignment of errors on which he will rely in his appeal to the Supreme Court of the United States from the judgment of this Court entered on November 22, 1948.

The Court errs:

1. In refusing to enjoin the defendants as state officers from enforcing Sections 455, 456 and 457 of the Oklahoma Statutes of 1941 upon the ground that the enforcement of said statutes violated the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States and Title 8, Sections 41 and 43 of the United States Code.

[fol. 168] 2. In refusing to enjoin the defendants as state officers from enforcing the order of defendant Board of Regents of the University of Oklahoma requiring the segregation of plaintiff from all other students of the University of Oklahoma solely because of race or color.

upon the ground that said order is a violation of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States and Title 8, Sections 41 and 43 of the United States Code.

3. In ruling as a matter of law that the claim of the plaintiff to an education in a state institution on a non-segregated basis without distinction as to race or color was not a constitutional right but a mere matter of public policy of the State in regard to its internal social affairs.

4. In ruling as a matter of law that the plaintiff's right to public education without racial distinction, segregation or ostracism by the State of Oklahoma was a matter of the internal social affairs of the State of Oklahoma controlled solely by the public policy of the State and was not a right protected by the Constitution of the United States.

5. In ruling as a matter of law that the Oklahoma Statutes previously held by the Court to be unconstitutional and unenforceable could nevertheless be used as a constitutional basis for subsequent orders of the defendants to segregate plaintiff from all other students and thereby ostracize him solely because of race or color.

6. In ruling as a matter of law that state statutes previously declared unconstitutional as applied to plaintiff [fol. 169] by state officers could be applied as a source of public policy to authorize the segregation of plaintiff from all other students of the University of Oklahoma solely because of race or color.

7. In ruling as a matter of law that the order requiring the segregation of plaintiff from the other students solely because of race or color rested "upon a reasonable basis and did not deprive the plaintiff of the equal protection of the laws or the right to liberty as guaranteed by the Constitution."

8. In ruling as a matter of law, in the absence of any evidence whatsoever to establish reasonableness of the classification, that the order requiring the segregation of the plaintiff from all other students solely because of race or color was a classification which rested upon a reasonable basis and did not violate the due process or equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

9. In ruling as a matter of law that the Fourteenth Amendment does not prohibit the State of Oklahoma from making racial distinctions among its citizens in the performance of its governmental function of providing public education at the graduate school level.

PRAYER FOR REVERSAL

For which errors plaintiff prays that the said decision and judgment of the District Court for the Western District [fol. 170] of Oklahoma in the above-entitled cause be reviewed by the Supreme Court of the United States and that the said judgment be reversed and that a judgment be rendered in favor of plaintiff.

Respectfully submitted, Amos T. Hall, 1071¹/₂ N. Greenwood Avenue, Tulsa, Oklahoma; Thurgood Marshall, 20 West 40th Street, New York, 18, New York, Attorneys for Plaintiff.

Robert L. Carter, Constance Baker Motley, Marian W. Perry, Franklin H. Williams, 20 West 40th Street, New York, 18, New York, of Counsel.

[fol. 171]

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL Jan. 18, 1949

It appearing to the court that the plaintiff has filed his petition for appeal to the Supreme Court of the United States, and has filed therewith his assignment of errors, and also his statement as to the jurisdiction of the Supreme Court of the United States, as required by Rule 12 of the Supreme Court Rules, duly disclosing that the ~~Supreme~~ Court of the United States has jurisdiction upon appeal to review the judgment in question.

IT IS ORDERED that the appeal prayed for be and the same is hereby allowed and granted to the Supreme Court of the United States from the judgment rendered in this cause on the 22nd day of November, 1948, and that plaintiff give a bond with good and sufficient security in the sum of — Dollars. (\$250.00), that he as appellant shall prosecute

his appeal to effect, and answer all damages and costs if he fails to make his appeal good.

Dated Jan. 18, 1949

Alfred P. Murrah.

[fols. 172-198] Citation in usual form omitted in printing.

[fol. 199] Cost Bond on Appeal for \$250.00 filed Jan. 18, 1949 omitted in printing.

[fol. 200]

IN UNITED STATES DISTRICT COURT

STIPULATION AS TO RECORD—Filed Jan. 26, 1949

It is hereby stipulated and agreed by and between the plaintiff and the defendant, above-named, by and through their respective counsel, that the following parts of the record may be prepared as the record to be transmitted to the Clerk of the Supreme Court of the United States:

1. Complaint
2. Motion for Preliminary Injunction and Notice of Hearing
3. Answer of Defendants
4. Stipulation of Facts (Agreed Statement of Facts)
5. Order of August 6, 1948
6. Minutes of August 23, 1948
7. Order of September 21 re-assigning cause for trial on Merits
8. Letter of Governor Turner (Exhibit 1 of Defendants)
9. Transcript of proceedings of September 29, 1948
10. Findings of Fact and Conclusions of Law (October 6, 1948)
11. Journal Entry and Order of Court (October 6, 1948)
12. Motion of Plaintiff to Modify Order and Judgment of September 29, 1948
13. Minutes of hearing of October 25, 1948
14. Finding of Fact and Conclusion of Law (November 22, 1948)
15. Journal Entry and Judgment of November 22, 1948

16. Amendment of Journal Entry of November 22, 1948
17. Transcript of Hearing of October 25, 1948
18. All of Exhibits introduced by plaintiff and defendants, including copies of minutes of Board of Regents
19. Petition for Appeal
20. Assignment of Errors
21. Statement of Jurisdiction
22. Citation
23. Stipulation and Acknowledgement of Service
24. Appeal Bond
25. Stipulation as to Designation of Record

Amos T. Hall, 107½ N. Greenwood Street, Tulsa, [fols. 201-202] —; Thurgood Marshall, 20 West 40th Street, New York 18, New York, Attorneys for Plaintiff. Mac Q. Williamson, Atty. Gen.; Fred Hanson, 1st Asst. Atty. Gen.; George T. Montgomery, Asst. Atty. Gen., Attorneys for Defendants.

Dated Jan. 21, 1949.

[fol. 203]

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 204] [Stamp:] Office of the Clerk, Supreme Court, U. S.
Mar. 9, 1949

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1948

No. 614

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed March 9, 1949

Now comes the appellant in the above-entitled cause and for his statement of points to be relied upon adopts his

assignment of errors and states that the entire record should be printed.

Thurgood Marshall, 20 W. 40th Street; New York 18,
N. Y., Counsel for Appellant.

I hereby certify that I have this date mailed a copy of the Above Statement of Points to be Relied Upon and Designation of Parts of the Record to be Printed to the Honorable Mac Q. Williamson, Oklahoma City, Oklahoma, Attorneys for Respondents by Air Mail.

Thurgood Marshall, Attorney for Appellant.

[fol. 205] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1949

No. 34

G. W. McLAURIN, Appellant,

vs.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION et al.

ORDER NOTING PROBABLE JURISDICTION—November 7, 1949

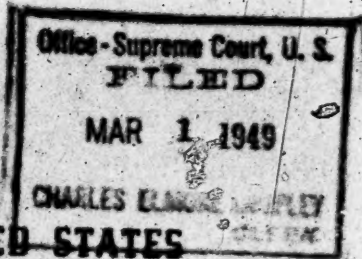
The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

November 7, 1949.

[fol. 206]

Endorsed on Cover; Enter Thurgood Marshall. File No. 53,616, U. S. D. C., Western Oklahoma, Term No. 34, G. W. McLaurin, Appellant, vs. Oklahoma State Regents for Higher Education, Board of Regents of University of Oklahoma, et al. Filed March 1, 1949. Term No. 34 O.T. 1949.

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SUPREME COURT, U.S.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 34

G. W. McLAURIN,

vs.

Appellant,

**OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION,
BOARD OF REGENTS OF UNIVERSITY
OF OKLAHOMA, ET AL.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF OKLAHOMA**

STATEMENT AS TO JURISDICTION

**AMOS T. HALL,
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FRANKLIN H. WILLIAMS,
Of Counsel.**

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IN THE DISTRICT COURT OF THE UNITED STATES
WESTERN DISTRICT OF OKLAHOMA

Civil No. 4039

G. W. McLAURIN,

Plaintiff,

vs.

BOARD OF REGENTS OF UNIVERSITY OF OKLAHOMA, GEORGE L. CROSS, LAWRENCE H. SNYDER AND J. E. FELLOWS,

Defendants

STATEMENT IN SUPPORT OF JURISDICTION

The plaintiff-appellant, having presented this day his petition for appeal and assignment of errors, now files this his statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on a direct appeal to review the final order and judgment in question, and should exercise such jurisdiction in this case.

I

Statute Sustaining Jurisdiction

The Supreme Court of the United States has jurisdiction to review this cause on appeal under the provisions of Title 28 United States Code, section 1253, this being an appeal from an order denying, after notice and hearing, an injunction in a civil action required by an act of Congress

to be heard and determined by a district court of three judges. (Title 28, United States Code, section 2281) The District Court for the Western District of Oklahoma sitting as a specially constituted three-judge court rendered a final judgment in this cause sustaining the validity of an order made by an administrative board acting under statutes of the State of Oklahoma after the validity of that order and statutes had been placed in issue by the plaintiff on the ground of its being repugnant to the Constitution of the United States.

II

The State Statutes and Administrative Orders, the Validity of Which Is Involved

The Oklahoma Statutes, the validity of which are involved are Sections 455, 456 and 457 of Title 70 of the Oklahoma Statutes (1941) which provide in part as follows: 70 O. S. 1941, Section 455 makes it a misdemeanor, punishable by a fine of not less than \$100 nor more than \$500 for

“any person, corporation or association of persons to maintain or operate any college, school or institution of this State where persons of both white and colored races are received as pupils for instruction,”

and provides that each day same is to be maintained or operated “shall be deemed a separate offense.”

70 O. S. 1941, Section 456, makes it a misdemeanor, punishable by a fine of not less than \$10 nor more than \$50 for any instructor to teach

“in any school, college or institution where members of the white race and colored race are received and enrolled as pupils for instruction,”

and provides that each day such an instructor shall continue to so teach “shall be considered a separate offense.”

70 O. S. 1941, section 457, makes it a misdemeanor punishable by a fine of not less than \$5 nor more than \$20 for

“any white person to attend any school, college or institution, where colored persons are received as pupils for instruction.”

and provides that each day such a person so attends “shall be deemed a distinct and separate offense.”

The full text of these statutes is set forth in the Appendix hereto.

At the hearing for a preliminary injunction the Court held that “insofar as any statute or law of the State of Oklahoma denies or deprives this plaintiff admission to the University of Oklahoma for the purpose of pursuing the courses of study he seeks, it is unconstitutional and unenforceable.” The Court, however, refused to issue a preliminary injunction.

Order by Board of Regents of University of Oklahoma, a State Board, Acting Pursuant to State Statutes, the Validity of Which Is Involved.

Subsequent to the above order of the Court the filing of a motion for further relief by the plaintiff, the defendant Board of Regents of the University of Oklahoma acting as a state board pursuant to the statutes of Oklahoma adopted an order which appears in the minutes of said board as follows:

“That the Board of Regents of the University of Oklahoma authorize and direct the President of the University, and the appropriate officials of the University, to grant the application for admission to the Graduate College of G. W. McLaurin in time for Mr. McLaurin to enrol at the beginning of the term, under such rules and regulations as to segregation as the President of the University shall consider to afford to Mr. G. W. McLaurin substantially equal educational

opportunities as are afforded to other persons seeking the same education in the Graduate College, and that the President of the University promulgate such regulations."

In refusing to enjoin the enforcement of this order the Court held as a matter of law that: "The Oklahoma statutes held unenforceable in the previous order of this Court have not been stripped of their validity to express the public policy of the State in respect to matters of social concern."

The Court refused to enjoin the enforcement of either the statutes or the order, dismissed the complaint of the plaintiff, and rendered judgment for the defendants.

III

Dates of Judgment and of Application for Appeal

The date of the judgment of the United States District Court for the Western District of Oklahoma which is now sought to be reviewed was November 22d, 1948. The application for appeal was presented on January 18th, 1949.

IV

Nature of the Case and Rulings in the District Court

On the 5th day of August, 1948, plaintiff filed in the United States District Court for the Western District of Oklahoma a complaint seeking a three-judge court as required by the then existing Section 266 of the Judicial Code for the issuance of a preliminary and permanent injunction against the Oklahoma State Regents for Higher Education, the Board of Regents of the University of Oklahoma and the Administrative Officers of the University of Oklahoma from enforcing Sections 455-457 of the Oklahoma statutes of 1941 under which the plaintiff and other qualified Negro

applicants were excluded from admission to the courses of study offered only at the Graduate School of the University of Oklahoma.

The complaint alleged that the plaintiff, G. W. McLaurin, was qualified in all respects for admission to the Graduate School of the University of Oklahoma but was denied admission solely because of race or color pursuant to the statutes of the State of Oklahoma and the orders of the Board of Regents of the University of Oklahoma acting pursuant to said statutes. Motion was made for a preliminary injunction. A hearing was held on the motion for preliminary injunction upon an agreed statement of facts in which all of the material facts were admitted and agreed upon. It was admitted that plaintiff, McLaurin, was qualified in all respects other than race or color for admission to the University of Oklahoma and that the courses he desired were offered by the State of Oklahoma only at the University of Oklahoma.

On the 6th day of October, 1948, the three-judge court filed a journal entry that "it is ordered and decreed that insofar as Sections 455, 456 and 457, 70 O. S. 1941, are sought to be applied and enforced in this particular case, they are unconstitutional and unenforceable." The Court, however, refrained from issuing and granting any injunctive relief but retained jurisdiction over the subject matter for entering any further orders as might be deemed proper.

On the 7th day of October, 1948, plaintiff filed a motion for further relief alleging that despite the prior ruling of the court, plaintiff had again been denied admission to the Graduate School of the University of Oklahoma and requested that the court enter an order requiring defendants to admit plaintiff to the "graduate school of the University of Oklahoma for the purpose of taking courses leading to a doctor's degree in education, subject only to the

same rules and regulations which apply to other students in said school."

At this hearing there was placed in issue the order of the defendant Board of Regents of the University of Oklahoma ordering that the plaintiff be admitted only on a basis of segregation solely because of his race. The plaintiff challenged the order as unconstitutional and the defendants rested upon the validity of such order as within the power of the Board of Regents of the University of Oklahoma as a state board.

At the hearing on said motion for further relief, the essential facts were agreed upon by counsel for both parties and, in addition, plaintiff testified as to the conditions under which he was admitted to the University of Oklahoma subsequent to the filing of the motion for further relief.

On the 22d day of November, 1948, the three-judge court issued Findings of Fact, Conclusions of Law and Journal Entry. In the Conclusions of Law, the Court held:

1. That the United States Constitution "does not authorize us to obliterate social or racial distinctions which the State has traditionally recognized as a basis for classification for purposes of education and other public ministrations. The Fourteenth Amendment does not abolish distinctions based upon race or color, nor was it intended to enforce social equality between classes and races."

2. "It is the duty of this court to honor the public policy of the State in matters relating to its internal social affairs quite as much as is our duty to vindicate the supreme law of the land."

3. "The Oklahoma statutes held unenforceable in the previous order of this court have not been stripped of their vitality to express the public policy of the State in respect to matters of social concern."

4. "We conclude therefore that the classification, based upon racial distinctions, as recognized and enforced by the regulations of the University of Oklahoma, rests upon a reasonable basis, having its foundation in the public policy of the State, and does not therefore operate to deprive this plaintiff of the equal protection of the laws."

The journal entry entered by the Court denied the relief prayed for, dismissed the complaint of plaintiff and entered judgment for the defendants.

V

Statement of the Grounds upon Which It Is Contended That the Questions Involved Are Substantial

Summary

The issue presented by this case has never been decided by the United States Supreme Court.

For one year the plaintiff has been endeavoring to secure admission to classes given at the University of Oklahoma leading to a doctor's degree in education. Such education is offered by the state only at the University of Oklahoma. Originally plaintiff was excluded from the University by the defendants in reliance upon the same criminal statutes prohibiting inter-racial education upon which these defendants had relied in excluding a qualified Negro from the law school.¹

When those statutes had been declared unconstitutional insofar as they operated to exclude plaintiff from the only educational facility offered by the state, the defendants ordered plaintiff to be admitted to the University on a segregated basis. In operation, that order, while purport-

¹ See *Sipuel v. Board of Regents of University of Oklahoma*, 332 U. S. , decided January 12, 1948.

ing to admit plaintiff, actually excludes him from the class in which the desired courses are given, for he has been placed in a different room from which he participates in class work through an open door.

All other students at the University of Oklahoma are accepted on an equal basis without regard to race, ancestry, creed, color or consideration other than individual merit. Plaintiff is excluded from the regular classroom, the regular library rooms and the main part of the cafeteria. This exclusion and segregation is based wholly in terms of race or color, "simply that and nothing more."² Solely because plaintiff is a Negro he has been denied rights enjoyed as a matter of course by other citizens of other races.

It is in this historical and factual context that the issue raised by the denial of plaintiff's motion for an injunction compelling his admission to the graduate school of the University "for the purpose of taking courses leading to a doctor's degree in education, subject only to the same rules and regulations which apply to other students in said school."

Thus, this Court is asked to decide—

Whether in providing graduate education in a state university the state may exclude a Negro student from the classroom and require him to participate in classes through an open doorway maintaining a spatial separation from other students?

No previous decision of this court dealing with the exclusion of Negroes from educational facilities³ or with the

² *Shelley v. Kraemer*, 92 L. Ed. 845 Adv. Sheets; *Buchanan v. Warren*, 245 U. S. 60.

³ *Missouri ex rel Gaines v. Canada*, 307 U. S. 305, *Sipuel v. Board of Regents of University of Oklahoma*, *supra*.

separation of the races in other aspects of life⁴ has ever passed upon the issue here presented.

This question is certainly substantial, undecided by any decisions of this Court, and is of such a character as to affect the basic rights of citizens of all races, not only in Oklahoma but throughout the United States.

VI

Argument

The right here involved is set forth clearly in the prayer for further relief where plaintiff sought an injunction requiring the defendants to admit the plaintiff "to the graduate school of the University of Oklahoma for the purpose of taking courses leading to a doctor's degree in education, subject only to the same rules and regulations which apply to other students in said school."

The right of Negroes not to be excluded from the only state university offering the desired subjects has been clearly established and recognized by this Court. However, the right of a Negro student subsequently admitted to such university not to be excluded from the regular classroom and thereby ostracized solely because of race or color and segregated from fellow students of all other races and colors has not been decided by the Supreme Court.

A

Access to Public Education Is So Vital to Democracy That It Requires the Highest Constitutional Protection

The role of education, in a democracy, might be defined as: The development in all citizens of the fullest intellectual and

⁴ *Plessy v. Ferguson*, 163 U. S. 537; *Hall v. DeGuir*, 95 U. S. 485; *Morgan v. Virginia*, 328 U. S. 373.

moral qualities, and the most effective participation in the duties of the citizens.

Any general agreement with this definition would automatically preclude any system of segregation on the basis of color,—the existence of which would most certainly abort any meaningful “. . . participation in the duties of the citizens.”

If an enlightened citizenry is a necessary factor in the equation of democracy, then it follows that education is an integral part of the democratic process. If education be a privilege, it is one of such a peculiar and precious nature that those entrusted with its administration have a compelling duty rather than mere discretionary power to see that no distinctions are made on the basis of race, creed or color.

Segregation in education is doubly damaging. First, it prevents both the Negro and white student from obtaining a full knowledge and understanding of the group from which he is separated, thereby infringing upon the natural rights of an enlightened citizen. Second, a feeling of distrust for the minority group is fostered in the community at large, a psychological atmosphere which is not favorable to the acquisition and conduct of an education or for the discharge of the duties of a citizen.

As stated in 47 Am. Jur., Schools, Section 6, p. 299, at common law, the parent's control over his child extended to the acquisition of an education. The parent's common law rights and duties in this regard “have been generally supplemented by constitutional and statutory provisions, and it is now recognized that *education is a function of the government*,” (Italics ours.)

Education is not only a component part of true democratic living, but is the very essence of and medium through which democracy can be effected. The intent of the framers

of the Fourteenth Amendment was indicated in the 43rd Congress in 1874 by these words: ". . . that all classes should have the equal protection of American law and be protected in their inalienable rights, *those rights which grow out of the very nature of society, and the organic law of this country.*"⁵ In 1943, an eminent sociologist and economist, Dr. Karl Mannheim, then Professor of Economics at London School of Economics, said:

"Finally, there is a move towards a true democracy arising from dissatisfaction with the infinitesimal contribution guaranteed by universal suffrage, a democracy which through careful decentralization of functions allots a creative social task to everyone. The same fundamental democratization claims for everyone a share in real education, one which no longer seeks primarily to satisfy the craving for social distinction, but enables us adequately to understand the pattern of life in which we are called upon to live and act."⁶

Finally, in 1947, seventy-three years after the 43rd Congress, the President's Committee on Higher Education took an unequivocal position against segregation in education. In terms of a definition of the role played by education the Report said:

". . . the role of education in a democratic society is at once to insure equal liberty and equal opportunity to differing individuals and groups, and to enable the citizens to understand, appraise, and redirect forces, men, and events as these tend to strengthen or to weaken their liberties."⁷

⁵ Congressional Globe, Forty-Third Congress, May 22, 1874.

⁶ Mannheim, Karl, *Diagnosis of Our Time*, Oxford University Press, 1944, p. 177.

⁷ Report of the President's Commission on Higher Education, *Higher Education for American Democracy*, Gov't. Printing Office, Washington, 1947, Vol. 1, p. 5.

Discrimination on the part of educational institutions constitutes a deeper injury to democracy. The Mayor's Committee on Unity stated in its Report on Inequality in Higher Education:⁸

" . . . It is generally agreed that the most urgent social problem of the day is to attain such attitudes of understanding and mutual respect among all elements of our population as will enable them to live together in harmony, regardless of diversity of race, creed, color or national origin. We call that the American Way. Actually such a condition is impossible of realization unless the principle of equality of opportunity in the important fields of human endeavor and relationship is recognized not only in theory but in practice, and until people are judged on the basis only of their own individual worth, and not according to what race they belong to or what creeds they profess.

"To attain such a goal, deep-seated prejudices must be overcome. And it is on education, in the broadest sense of the term, that we must primarily rely to correct these prejudices."

In the light of this role played by education, it is particularly pertinent to consider the uncontroverted testimony of the plaintiff that the effect upon him of his exclusion from the classroom is to deny him an opportunity to secure an equal education. Leaving aside for the moment the grave damage to society resulting from the failure of education to demonstrate in practice the principle of equality upon which our society is founded, in this case the plaintiff's individual right, guaranteed by the Constitution, to have an equal opportunity to secure an education has been denied by the segregation practiced by the University of Oklahoma.

⁸ *Report on Inequality of Opportunity in Higher Education*, Mayor's Committee on Unity, New York, 1946, pp. 1, 2.

The United States Constitution Prohibits Government Classifications Based On Race or Ancestry

In recent cases the Supreme Court has held on many occasions under a variety of circumstances that racial criteria are irrational, irrelevant, odious to our way of life and specifically proscribed under the Fourteenth Amendment.⁹ Whether this proscription against racial classifications be found in the constitutional concept of equal protection¹⁰ or is included within the meaning of due process,¹¹ the result is the same. The only apparent limitation on this doctrine appears to be that of a national emergency such as the danger of espionage and sabotage in time of war which might control the decision of the Court.

In *Hirabayashi v. United States*,¹² the Supreme Court had to determine whether a curfew order adopted by the West Coast military commander pursuant to Congressional authority violated petitioner's constitutional rights in that the curfew applied only to persons of Japanese ancestry.

The Court said:

"Distinctions between citizens solely because of their ancestry are by their nature odious to a free people. For that reason, legislative classification or discrimination based on race alone has often been held to be a denial of equal protection." 320 U. S. 101.

Except for the "dangers of war and sabotage the racial distinctions there in issue would have been struck down.

⁹ *Shelley v. Kraemer*, supra, *Oyama v. California*, 332 U. S. 214; *Takahashi v. Fish & Game Commission*, — U. S. —.

¹⁰ *Shelley v. Kraemer*, supra.

¹¹ *Hirabayashi v. U. S.*, 320 U. S. 81.

¹² 320 U. S. 81.

In *Korematsu v. United States*, 323 U. S. 214, petitioner was convicted for remaining in California in violation of the Japanese exclusion order. The Court said that "legal restrictions which curtail the civil rights of a single racial group are immediately suspect. . . . Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can."

In *Oyama v. California*, 332 U. S. 633 (1948), the Court had before it the constitutionality of the California Alien Land Law which forbade aliens ineligible for American citizenship from acquiring, owning, occupying, leasing or transferring agricultural land.

Said the Court: "In approaching cases, such as this one, in which federal constitutional rights are asserted, it is incumbent on us to inquire not merely whether those rights have been denied in express terms, but also whether they have been denied in substance and effect. We must review independently both the legal issues and those factual matters with which they are commingled. . . . In our view of the case, the State has discriminated against Fred Oyama; the discrimination is based solely on his parents' country of origin; and there is absent the compelling justification which would be needed to sustain discrimination of that nature."

In *Shelley v. Kraemer*, 92 L. Ed. 845, Adv. Sheets, the basic issue was the validity of court enforcement of racial restrictive covenants intended to exclude Negroes from the ownership or occupancy of real property. The Court stated: "Because of the race or color of these petitioners they have been denied rights of ownership or occupancy enjoyed as a matter of course by other citizens of different race or color." . . . 92 L. Ed. 855, Adv. Sheets.

"The historical context in which the Fourteenth Amendment became a part of the Constitution should not be forgotten. Whatever else the framers sought to achieve, it is

clear that the matter of primary concern was the establishment of equality in the enjoyment of basic civil and political rights and the preservation of those rights from discriminatory action on the part of the States based on considerations of race or color." . . . "Upon full consideration, we have concluded that in these cases the States have acted to deny petitioners the equal protection of the laws guaranteed by the Fourteenth Amendment." (92 L. Ed. 857 Adv. Sheets.)

The Supreme Court has also held that union bargaining representatives operating under authority of Congress are not permitted to discriminate because of race or color.¹³ On the other hand state statutes prohibiting racial discrimination by labor unions have been upheld as within the spirit of the Fourteenth Amendment.¹⁴

It is clear that although states are permitted to make reasonable classifications for governmental purposes, classifications on the basis of race are unconstitutional violations of the Fifth or Fourteenth Amendment depending on whether the racial classification is by the federal or state government.

C. The Order of the Defendant State Board of Regents Requiring the Segregation of the Plaintiff Enforced by the Exclusion of the Plaintiff from the Regular Classroom Solely Because of Race Is Unconstitutional.

It is clear from the history of the treatment of Negroes seeking graduate educational advantages offered by the State of Oklahoma that the problem confronting the court is one of exclusion. That was true in *Sipuel v. Board of Regents* (92 L. Ed. 256 Adv. Sheets) and it was true in the earliest stages of this action, when the plaintiff was excluded

¹³ *Steele v. Louisville & Nashville RR Co.*, 325 U. S. 192 (1944).

¹⁴ *Railway Mail Association v. Corsi*, 326 U. S. 88 (1945).

entirely from the University of Oklahoma. It is true at the present time, when the plaintiff, admitted to the campus of the University, is still excluded from the classroom in which the courses he is taking are given to other students. Plaintiff and those other students are, presumably, entitled to pursue the same course of instruction, at the same time, take the same examinations and will, presumably, if they are competent, be awarded the same degree by the University. But during this entire period of study the plaintiff will be excluded, physically, from the room in which other students undertake the joint enterprise of securing an education.

The Supreme Court has dealt on many occasions with the efforts of state agencies to exclude racial minorities from some aspect of community life. Recently, in *Shelley v. Kraemer*, *supra*, the Supreme Court found that the state courts could not exclude Negroes from residential areas by enforcement of racial restrictive covenants entered into by white residents. Thirty years earlier the Court had held that such exclusion could not be accomplished by the enactment of municipal ordinances fixing the boundaries of white and Negro residential areas. *Buchanan v. Warley*, *supra*.

If the state may not, through any of its officials enforce the exclusion of a Negro from a neighborhood where he has "qualified" as a resident by purchasing a home from a willing seller, by what logic can the state be justified in excluding from a classroom a Negro who has qualified and been admitted as a student in that class.

The Supreme Court has held that exclusion of Negroes from residential areas by state action could not be justified by resort to the police power of the state in an effort to prevent race conflict (*Buchanan v. Warley*, *supra*) nor by the sanctity of private contracts (*Shelley v. Kraemer*, *supra*).

It is apparent that the power of the president of a state university acting upon an order of an administrative board of the state to require a qualified Negro student, duly admitted to a class in the University, to remain physically excluded at all times from the room in which that class is conducted must be tested against the same constitutional limitations which apply to the power of other state agencies to exclude a Negro from a home he has purchased.

As the Supreme Court stated in the *Shelley* case:

"Only recently this Court has had occasion to declare that a state law which denied equal enjoyment of property rights to a designated class of citizens of specified race and ancestry, was not a legitimate exercise of the state's police power but violated the guaranty of the equal protection of the laws. *Oyama v. California*, 332 U. S. 633 (1948)." 92 L. Ed. 856.

The record of this case is barren of any attempt to define the source of the extraordinary power claimed by the State of Oklahoma. Clearly the trial court was not justified in resorting to a vague public policy, not in itself shown to be reasonable, for when no basis is shown for a classification, the courts may not "conjure up" justifications. *Mayflower Farms v. Ten Eyck*, 297 U. S. 266 (1935).

The two basic considerations used by the Supreme Court in the *Shelley* case (*supra*) to determine whether the Fourteenth Amendment had been violated were first whether the action was state action and second whether the race of the parties was the determining factor in that action. Those two questions having been affirmatively answered the prohibitions of the Fourteenth Amendment automatically attached to the action of the state. Thus, the Court stated:

"It should be observed that these covenants do not seek to proscribe any particular use of the affected properties. Use of the properties for residential occu-

pancy; as such, is not forbidden. The restrictions of these agreements, rather, are directed toward a designated class of persons and seek to determine who may and who may not own or make use of the properties for residential purposes. The excluded class is defined wholly in terms of race or color; 'simply that and nothing more.' . . . (92 L. Ed. 850, Adv. Sheets.)

"We have noted that freedom from discrimination by the States in the enjoyment of property rights was among the basic objectives sought to be effectuated by the framers of the Fourteenth Amendment. That such discrimination has occurred in these cases is clear. Because of the race or color of these petitioners they have been denied rights of ownership or occupancy enjoyed as a matter of course by other citizens, of different race or color." (92 L. Ed. 855, Adv. Sheets.)

The United States Supreme Court has also given protection to those substantive rights which it has found to be included within the liberty guaranteed by the due process clause of the Fourteenth Amendment. *Myers v. Nebraska*, 262 U. S. 390 (1922); *Pierce v. Society of Sisters*, 268 U. S. 510; (1925). In each of these cases the Court found that the state, notwithstanding its power to regulate all schools, had interfered with a right belonging to the individuals protected by this clause and which was beyond the power of the state to regulate.

In this case, plaintiff sought to invoke the protection of the federal constitution against unequal treatment and also against the deprivation of his liberty or right to enjoy facilities afforded by the state and open to members of another group.

The rights created by the Fourteenth Amendment are, by its terms, guaranteed to the individual. The rights established are personal rights—personal to the individual not to racial groups.

The plaintiff has been seeking to enforce his right to

obtain graduate education at the University of Oklahoma on the same basis as all other qualified students and subject only to the same rules and regulations. This right can only be enjoyed by his admission to the only class and classroom where these courses are taught. However, plaintiff is still excluded from the classroom and is only permitted to participate in the class from another room through an open door, thereby being subjected to rules and regulations applicable solely to him because of his race and color. Thus the plaintiff's individual right was qualified on a group racial basis, set aside by the State of Oklahoma and thereby effectively denied to the plaintiff.

D. The Conflict Between Early and Recent Decisions of the Supreme Court Defining the Limits of State Power to Make Classifications Based On Race under the Fourteenth Amendment Should Be Resolved.

In this case the defendants put in no evidence to show any basis for the exclusion of the plaintiff from the regular classroom. They relied solely upon their alleged right to do so because of race and color.

In denying the plaintiff the relief requested this Court held that the Fourteenth Amendment "does not authorize us to obliterate social or racial distinctions which the State has traditionally recognized as a basis for classification for purposes of education and other public ministrations. The Fourteenth Amendment does not abolish distinctions based upon race or color, nor was it intended to enforce social equality between classes and races . . . It is the duty of this Court to honor the public policy of the State in matters relating to its internal social affairs quite as much as it is our duty to vindicate the supreme law of the land." It is thereby clear that the basic error in the decision in this case was the reliance on the theory set forth in the case of

Plessy v. Ferguson, supra, rather than the basic pronouncements of the United States Supreme Court in the more recent cases.

In the case of *Plessy v. Ferguson*, 163 U. S. 537 (1896) the majority of the Supreme Court, in upholding the validity of a state statute requiring segregation of the races in intra-state transportation, stated:

"The object of the amendment (Fourteenth) was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either." (163 U. S. 537, 544)

In the case of *Buchanan v. Warley, supra*, the Supreme Court, in declaring invalid an ordinance requiring residential segregation, stated:

"It is the purpose of such enactments, and it is frankly avowed it will be their ultimate effect, to require by law, at least in residential districts, the compulsory separation of the races on account of color. Such action is said to be essential to the maintenance of the purity of the races, although it is to be noted in the ordinance under consideration that the employment of colored servants in white families is permitted, and nearby residences of colored persons not coming within the blocks, as defined in the ordinance, are not prohibited.

"The case presented does not deal with an attempt to prohibit the amalgamation of the races. The right which the ordinance annulled was the civil right of a white man to dispose of his property if he saw fit to do so to a person of color, and of a colored person to make such disposition to a white person.

"It is urged that this proposed segregation will pro-

note the public peace by preventing race conflicts. Desirable as this is, and important as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution." 245 U. S. 81.

The rationale of the *Plessy* case as to classification of Negroes has always been in direct conflict not only with the principles set forth in the *Buchanan* case, *supra*, as to residential segregation but has also been in conflict with other decisions of the Supreme Court on the limitations of the Fourteenth Amendment on the right of states to make classifications.

More recent decisions of the Supreme Court set out above have made it clear that the basis for the decision in the *Plessy* case that the Fourteenth Amendment "could not have been intended to abolish distinctions based upon color" is no longer valid.

In this case the right which the plaintiff asserts is a right in keeping with these latter decisions of the Supreme Court.

The trial court, again following the doctrines of the *Plessy* case, upheld the racial classification because it "rests upon a reasonable basis, having its foundation in the public policy of the state." This ruling is in direct conflict with prior decisions of the Supreme Court.

In the *Buchanan* case the Supreme Court stated "it is equally well established that the police power, broad

¹⁵ In order that a classification may meet the prohibitions of the equal protection clause, the Supreme Court has required that the state must show first, that the purpose sought to be achieved by the classification is within the scope of state power, and second, that the classification bears a reasonable relationship to the end sought by the legislation.

Skinner v. Oklahoma, 316 U. S. 535 (1942); *South Carolina Highway Dept. v. Barnwell*, 303 U. S. 177 (1938); *Great A. & P. Co. v. Grosjean*, 304 U. S. 412 (1937); *Luggett v. Lee*, 288 U. S. 517 (1933); *Patterson v. Pennsylvania*, 232 U. S. 138 (1914); *Rosenthal v. New York*, 226 U. S. 290 (1912); *Dickson RR v. Matthews*, 174 U. S. 96 (1899).

as it is, cannot justify the passage of a law or ordinance which runs counter to the limitations of the Federal Constitution; that principle has been so frequently affirmed in this court that we need not stop to cite the cases." (245 U. S. 66, 74)

In the *Shelley* case the Supreme Court stated ". . . Nor may the discriminations imposed by the state courts in these cases be justified as proper exercises of state police power" (92 L. Ed. Adv. Sheets 845, 856).

In the *Plessy* case, there was enunciated the now antiquated and discarded doctrine which has been relied upon by various states to sustain the constitutionality of statutes requiring the segregation of the races in public education. In the light of more recent decisions of the United States Supreme Court, that case can no longer be used as an authority for the type of discrimination here in issue.

The recent cases, standing as they do for the principle that racial classification by government is unconstitutional, because "(d)istinctions between citizens solely because of their ancestry are by their nature odious to a free people," have completely repudiated the doctrine of *Plessy v. Ferguson* that the Fourteenth Amendment "could not have been intended to abolish distinctions based upon color."

The important governmental function of public education is seriously handicapped by the blind adherence to the doctrine set forth in the *Plessy* case. Just as the conflict between the decisions of *Grovey v. Townsend*, 295 U. S. 45, and *United States v. Classic*, 313 U. S. 299, had to be resolved in *Smith v. Allwright*, 321 U. S. 649, the conflict between the *Plessy* case and the latter cases set out above must be resolved.

That the questions here presented are substantial is made

even clearer by the Fifth recommendation of the Report of the President's Committee on Civil Rights.

"The separate but equal doctrine has failed in three important respects. First, it is inconsistent with the fundamental equalitarianism of the American way of life in that it marks groups with the brand of inferior status. Secondly, where it has been followed, the results have been separate and unequal facilities for minority peoples. Finally, it has kept people apart despite incontrovertible evidence that an environment favorable to civil rights is fostered whenever groups are permitted to live and work together. There is no adequate defense of segregation." ¹⁶

Conclusion

Negroes seeking public education in Oklahoma and other southern States have always been subjected to varying degrees of discrimination—all based on race and color alone. In this case the plaintiff is seeking to enforce the right to an education by the State of Oklahoma on the same basis as other students subject only to rules and regulations applicable to all. On the other hand, the State of Oklahoma has insisted upon determining his right on the basis of a racial classification. First it was complete exclusion from the university—later it was the exclusion from the classroom. Plaintiff is still the victim of the same racial classification. His individual right is lost in the racial group classification pursuant to the alleged State public policy derived from statutes heretofore declared unconstitutional. The evil complained of is the racial classification which the Fourteenth Amendment was intended to abolish. The question herein involved is not only substantial within the mean-

¹⁶ Report of the President's Committee on Civil Rights, *To Secure These Rights*, Government Printing Office, Washington, D. C., 1947, p. 166.

ing of the jurisdictional statutes but is basic to two of the most vital areas of our democratic process—public education and the individual's right to complete equality before the law.

Respectfully submitted,

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Of Counsel.

APPENDIX "A"

Oklahoma Statutes Involved

70 O.S. 1941, Section 455. It shall be unlawful for any person, corporation or association of persons, to maintain or operate any *college*, school or institution of this state where persons of both white and colored races are received as pupils for instruction, and any person or corporation who shall operate or maintain any such *college*, school or institution in violation hereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, and each day such school, college or institution shall be open and maintained shall be deemed a separate offense. (L. 1913, ch. 219, p. 572, art. 15, Section 5.)

70 O.S. 1941, Section 456. Any instructor who shall teach in any school, college or institution where members of the white race and colored race are received and enrolled as pupils for instruction, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten dollars nor more than fifty dollars for each offense, and each day any instructor shall continue to teach in any such *college*, school or institution, shall be considered a separate offense. (L. 1913, ch. 219, p. 572, art. 15, Section 6.)

70 O.S. 1941, Section 457. It shall be unlawful for any white person to attend any school, college or institution, where colored persons are received as pupils for instruction, and any one so offending shall be fined not less than five dollars, nor more than twenty dollars for each offense, and each day such person so offends, as herein provided, shall be deemed a distinct and separate offense; provided, that nothing in this article shall be construed as to prevent any private school, *college* or institution of learning from maintaining a separate or distinct branch thereof in a different locality. (L. 1913, ch. 219, p. 572, art. 15, Section 7.)

APPENDIX "B"**Order Involved**

From the minutes of a special meeting of the Regents of the University of Oklahoma held on Sunday, October 10, 1948.

Regent Emery: "I now offer the following motion and move its adoption: 'That the Board of Regents of the University of Oklahoma authorize and direct the President of the University, and the appropriate officials of the University to grant the application for admission to the Graduate College of G. W. McLaurin in time for Mr. McLaurin to enroll at the beginning of the term, under such rules and regulations as to segregation as the President of the University shall consider to afford to Mr. G. W. McLaurin substantially equal educational opportunities as are afforded to other persons seeking the same education in the Graduate College, and that the President of the University promulgate such regulations'."

A roll call vote was asked for with the following voting Aye:

Regent Emery
Regent Shepler
Regent White
Regent Benedum
Regent Deacon
Regent McBride

Absent:

Regent Noble.

APPENDIX "C"**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA**

No. 4039 (Civil)

G. W. McLAURIN, Plaintiff,

vs.

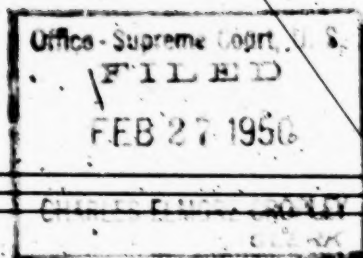
**OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION, ET AL.,
Defendants****Journal Entry**

Be it remembered that this cause came on regularly for hearing before this duly constituted court on August 23, 1948. The plaintiff appeared in person and by his attorneys Thurgood Marshall and Amos T. Hall. The defendants appeared either in person, or by and through the Honorable Mac Q. Williamson, Attorney General of the State of Oklahoma, Fred Hansen and George T. Montgomery, Assistant Attorneys General. Testimony was introduced, argument was had, and the matter was continued until September 24, 1948, and was thereafter continued until September 29, 1948. Further evidence was taken, argument heard, and the cause finally submitted.

On this, the 6 day of October, 1948, it is ordered and decreed that insofar as Sections 455, 456 and 457, 70 O. S. 1941, are sought to be applied and enforced in this particular case, they are unconstitutional and unenforceable.

The court refrains at this time, however, from issuing or granting any injunctive relief, but jurisdiction over the subject matter is reserved for the purpose of entering any such further orders as may be deemed proper in the circum-

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IN THE

Supreme Court of the United States

October Term, 1949

No. 34

G. W. McLAURIN,

Appellant,

vs.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION,
BOARD OF REGENTS OF UNIVERSITY
OF OKLAHOMA, *ET AL.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF OKLAHOMA

BRIEF FOR APPELLANT.

ROBERT L. CARTER,

AMOS T. HALL,

THURGOOD MARSHALL,

Attorneys for Petitioner.

JACK STERNBERG,

CONSTANCE B. MOTLEY,

FRANK D. REEVES,

Of Counsel.

ANNETTE H. PEYSER,

Research Consultant.

stances to secure to the plaintiff the redress he seeks under the Constitution and laws of the United States.

Done this 6 day of October, 1948.

(S.) ALFRED P. MURRAH,
Judge of the U. S. Court of Appeals.

(S.) EDGAR S. VAUGHT,
U. S. District Judge.

(S.) BOWER BROADBUSH,
U. S. District Judge.

Endorsed: Filed October 6, 1948. Theodore M. Filson,
Clerk.

APPENDIX "D"

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 4039 (Civil)

G. W. McLAURIN, *Plaintiff,*

vs.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION, ET AL.,
Defendants

Findings of Fact and Conclusions of Law

Preliminary Statement

By this suit, we are asked to enjoin the defendants from refusing to admit the plaintiff to the University of Oklahoma, for the purpose of pursuing a postgraduate course in education leading toward a doctor's degree. It is said that although having made timely application for admission, and being morally and scholastically qualified, he has been denied admission solely because, as a member of the Negro race, the laws of Oklahoma forbid his admission under criminal penalty. It is said that in these circumstances, refusal to admit the plaintiff to the University of

Oklahoma, for the purpose of pursuing the course of study he seeks, is a deprivation of his rights to the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Findings of Fact

I

In accordance with the stipulation, the court finds that the University of Oklahoma is an educational institution maintained by the taxpayers of the State, from funds derived from uniform taxation, and that it is the only educational institution supported by public taxation in which the plaintiff can pursue a postgraduate course leading to a doctor's degree in education.

II

That during the enrollment period for the second semester for the 1947-1948 school term, plaintiff applied for admission to the University for the purpose of taking such courses which would entitle him to a doctor's degree in education, and that at the time of his application, he possessed and still possesses all of the scholastic and moral qualifications prescribed by the University of Oklahoma for admission to the courses he seeks to pursue, and that he was denied admission to the University on February 2, 1948, solely because as a member of the Negro race, the applicable laws of Oklahoma (70 O. S. 1941, Sections 455, 456 and 457) make it a criminal offense for any person to operate a school or college or any educational institution where persons of both white and colored races are received as pupils for instruction, or for any instructors to teach in, or any white person to attend, any such school.

Conclusions of Law

I

This suit arises under the Constitution and laws of the United States, and seeks redress for the deprivation of civil rights guaranteed by the Fourteenth Amendment. The court is therefore vested with jurisdiction, regardless of

diversity of citizenship or amount in controversy. *Hague v. C. I. O.*, 307 U. S. 496, 514; *Douglas v. Jeannette*, 319 U. S. 157. Since a temporary injunction against the enforcement of the State law on the grounds of their unconstitutionality is sought, the subject matter is properly cognizable by a three judge court under Section 266 of the Judicial Code, 28 U. S. C. A. 330.

II

We hold, in conformity with the equal protection clause of the Fourteenth Amendment; that the plaintiff is entitled to secure a postgraduate course of study in education leading to a doctor's degree in this State in a State institution, and that he is entitled to secure it as soon as it is afforded to any other applicant. *Sipuel v. Board of Regents*, 332 U. S. 631; *Missouri ex rel Gaines v. Canada*, 305 U. S. 337. That such educational facilities are now being offered to and received by other applicants at the University of Oklahoma, and that although timely and appropriate application has been made therefore, to this time such facilities have been denied this plaintiff.

III

The court is of the opinion that insofar as any statute or law of the State of Oklahoma denies or deprives this plaintiff admission to the University of Oklahoma for the purpose of pursuing the course of study he seeks, it is unconstitutional and unenforceable. This does not mean, however, that the segregation laws of Oklahoma are incapable of constitutional enforcement. We simply hold that insofar as they are sought to be enforced in this particular case, they are inoperative.

IV

Our attention has been called to and we have seen a statement of the Governor of this State in which he commits the State to a certain course of action, designed to afford equal segregated facilities to this plaintiff and members of his Race in compliance with the constitutional requirements. In that connection, we think it appropriate to state that it is not our function to say what the State shall do in order

to comply with its acknowledged responsibilities to its citizens. Rather it is our function to determine whether what has been done and what is being done meets the constitutional mandate.

V

In the performance of this important function, we sit as a court of equity, with power to fashion our decree in accordance with right and justice under the law. Accordingly, we refrain at this time from issuing or granting any injunctive relief, on the assumption that the law having been declared, the State will comply. We retain jurisdiction of this case, however, with full power to issue such further orders and decrees as may be deemed necessary and proper to secure to this plaintiff the equal protection of the laws, which, translated into terms of this lawsuit, means equal educational facilities.

(S.) ALFRED P. MURRAH,
Judge of the U. S. Court of Appeals.

(S.) EDGAR S. VAUGHT,
U. S. District Judge.

(S.) BOWER BROADBUSH,
U. S. District Judge.

Endorsed: Filed October 6, 1948. Theodore M. Filson,
Clerk.

APPENDIX "E"**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA**

No. 4039 (Civil)

G. W. McLaurin, *Plaintiff*,*vs.*OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION, ET AL.,
*Defendants***Journal Entry**

Be it remembered that this cause came on for further consideration on the 25th day of October, 1948. The plaintiff, McLaurin, appeared in person and by his counsel, Thurgood Marshall and Amos T. Hall. The applicant, Mauderie Florence Hancock Wilson, appeared in person and by the same counsel of record. The defendants appeared either in person or by and through the Attorney General of the State of Oklahoma, the Honorable Mac Q. Williamson, and Assistant Attorneys General Fred Hansen and George T. Montgomery. Testimony was heard, and the case was finally submitted on briefs of the parties.

Upon consideration of the evidence, argument and briefs, it is ordered that the relief now sought by the Plaintiff McLaurin should be and the same is hereby denied.

It is further ordered that the relief prayed for by the applicant, Wilson, should be and the same is thereby denied. The complaint as to each of the parties is dismissed and judgment is entered for the defendants.

ALFRED P. MURRAH.
EDGAR S. VAUGHT.
BOWER BROADBUSH.

Endorsed: Filed Nov. 22, 1948. Theodore M. Filson,
Clerk, by Margaret P. Blair, Deputy.

APPENDIX "F"**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA**

No. 4039 (Civil)

G. W. McLaurin, *Plaintiff,**vs.*OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION, ET AL.,
*Defendants***Findings of Fact and Conclusions of Law****PRELIMINARY STATEMENT**

At a former hearing of this cause, we held the segregation laws of the State of Oklahoma (70 O. S. 1941, Sections, 455, 456 and 457) unconstitutional and inoperative insofar as they deprived the plaintiff of his constitutional right to pursue the course of study he sought at the University of Oklahoma. We were careful, however, to confine our decree to the particular facts before us, while recognizing the power of the State to pursue its own social policies regarding segregation in conformity with the equal protection of the laws. We expressly refrained from granting injunctive relief, on the assumption that the State statutory impediments to equal educational facilities having been declared inoperative, the State would provide such facilities in obedience to the constitutional mandate.

Now this cause comes on for further consideration on complaint of the plaintiff, to the effect that although he has been admitted to the University of Oklahoma, and to the course of study he sought, the segregated conditions under which he was admitted, and is required to pursue his course of study, continue to deprive him of equal educational facilities in conformity with the Fourteenth Amendment.

FINDINGS OF FACT

I

The undisputed evidence is that subsequent to our decree in this case, plaintiff was admitted to the University of Oklahoma, and to the same classes as those pursuing the same courses. He is required, however, to sit at a designated desk in or near a wide opening into the classroom. From this position, he is as near to the instructor as the majority of the other students in the classroom, and he can see and hear the instructor and the other students in the main classroom as well as any other student. His objection to these facilities is that to be thus segregated from the other students so interferes with his powers of concentration as to make study difficult, if not impossible, thereby depriving him of the equal educational facilities. He says in effect that only if he is permitted to choose his seat as any other student, can he have equal educational facilities.

II

He is accorded access to and use of the school library as other students, except if he remains in the library to study, he is required to take his books to a designated desk on the mezzanine floor. All other students who use the library may choose any available seat in the reading room in the library, but a majority find it necessary to study elsewhere because of a lack of seating capacity in the library. The plaintiff says that this secluded and segregated arrangement tends to set him apart from other students and hence to deprive him of equal facilities.

III

He is admitted to the school cafeteria, where he is served the same food as other students, but at a different time and at a designated table. He does not object to the food, the dining facilities, or the hour served, but to the segregated conditions under which he is served.

In the language of his counsel, he complains that "his required isolation from all other students, solely because

of the accident of birth • • • creates a mental discomfiture, which makes concentration and study difficult, if not impossible • • •; that the enforcement of these regulations places upon him "a badge of inferiority which affects his relationship, both to his fellow students, and to his professors." \

CONCLUSIONS OF LAW

I

It is said that since the segregation laws have been declared inoperative, the University is without authority to require the plaintiff to attend classes under the segregated conditions. But the authority of the University to impose segregation is of concern to this court only if the exercise of that authority amounts to a deprivation of a federal right. See *Screws v. United States*, 325 U. S. 91.

The Constitution from which this court derives its jurisdiction does not authorize us to obliterate social or racial distinctions which the State has traditionally recognized as a basis for classification for purposes of education and other public ministrations. The Fourteenth Amendment does not abolish distinctions based upon race or color, nor was it intended to enforce social equality between classes and races. *Plessy v. Ferguson*, 163 U. S. 537; *Cummings v. United States*, 175 U. S. 528; *Gong Lum v. Rice*, 275 U. S. 78; *Missouri ex rel Gaines v. Canada*, 305 U. S. 37. It is only when such distinctions are made the basis for discrimination and unequal treatment before the law that the Fourteenth Amendment intervenes. *Truax v. Raich*, 293 U. S. 33, 42: It is the duty of this court to honor the public policy of the State in matters relating to its internal social affairs quite as much as it is our duty to vindicate the supreme law of the land.

III

The Oklahoma statutes held unenforceable in the previous order of this court have not been stripped of their vitality to express the public policy of the State in respect to matters of social concern. The segregation condemned in *Westminister School District v. Mendez*, 161 F. 2d 774, was found to be "wholly inconsistent" with the public policy

of the State of California, while in our case the segregation based upon racial distinctions is in accord with the deeply rooted social policy of the State of Oklahoma.

IV

The plaintiff is now being afforded the same educational facilities as other students at the University of Oklahoma. And, while conceivably the same facilities might be afforded under conditions so odious as to amount to a denial of equal protection of the law, we cannot find any justifiably legal basis for the mental discomfiture which the plaintiff says deprives him of equal educational facilities here. We conclude therefore that the classification, based upon racial distinctions, as recognized and enforced by the regulations of the University of Oklahoma, rests upon a reasonable basis, having its foundation in the public policy of the State, and does not therefore operate to deprive this plaintiff of the equal protection of the laws. The relief he now seeks is accordingly denied.

APPLICATION OF MRS. MAUDE FLORENCE HANCOCK WILSON

Mrs. Maude Florence Hancock Wilson, claiming to be a member of the same class and similarly situated with the plaintiff McLaurin, has renewed her application for entrance to the University of Oklahoma to pursue a course of study in social work, and upon being denied entrance she comes here seeking the same relief sought by McLaurin in his class action.

The facts are that Mrs. Wilson applied for admission to the University of Oklahoma on January 28, 1948, for the purpose of studying for a master's degree in sociology. She was morally and scholastically qualified to pursue this course of study, and it was unavailable at any separate school within the State of Oklahoma. When her application for entrance was denied, solely because the laws of Oklahoma forbade it, she filed suit in the District Court of Cleveland County, Oklahoma, in May 1948, for a writ of mandamus to compel her admission on substantially the same grounds now asserted here. Having been denied relief in the District Court, she has perfected her appeal to the

Supreme Court of Oklahoma, and that appeal is now pending and undecided. She did not renew her application for admission to the University until October 15, 1948, two days after registration was closed to any applicant for any course of study at the University.

Having elected to pursue an equally adequate remedy in the courts of the State for the purpose of securing equal protection of the laws, and is now actively pursuing that remedy, she is not similarly situated with the plaintiff, McLaurin. Moreover, the course of study she now seeks to pursue is not the same as the one originally sought, and not having applied for admission until all other persons would have been similarly denied admission, she is not within the class for which this suit is prosecuted. The relief sought by her is, therefore, denied.

ALFRED P. MURRELL.
EDGAR S. VAUGHT.
BOWER BROADBUSH.

Endorsed: Filed Nov. 22, 1948. Theodore M. Filson,
Clerk, by Margaret P. Blair, Deputy.

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Other Authorities

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| American Jurisprudence, Volume 47—Schools, Sec. 6 | 19 |
| American Teachers Assn., <i>The Black & White of Rejections for Military Service</i> (1944) | 23 |
| Baruch, <i>Glass House of Prejudice</i> (1946) | 28 |
| Bond, <i>Education of the Negro in the American Social Order</i> , 3 (1934) | 26 |
| Bunche, <i>Education in Black and White</i> , 5 Journal of Negro Education 351 (1936) | 26 |
| Clark, <i>Negro Children</i> , Educational Research Bulletin (1923) | 23 |
| Cooper, <i>The Frustrations of Being a Member of a Minority Group: What Does It Do to the Individual and to His Relationships With Other People?</i> 29 Mental Hygiene 189 (1945) | 26 |
| Cong. Globe, 39th Cong., 1st Sess. (1865) | 49 |
| Cong. Globe, 39th Cong., 1st Sess. (1866) | 47 |
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| Cong. Rec., 43rd Cong., 1st Sess. (1874) | 51, 53 |

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|--|--------|
| Deutscher and Chvín, <i>The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion</i> , 26 <i>Journal of Psychology</i> 259 (1948) | 26 |
| Dollard, <i>Caste and Color in a Southern Town</i> (1937) | 26 |
| Douglas, <i>Stare Decisis</i> , 49 <i>Col. L. Rev.</i> 735 (1949) | 39 |
| Education for Freedom, Inc., <i>A Symposium of Radio Broadcasts on Education in a Democracy</i> (1943) | 19 |
| Fairman & Morrison, <i>Does the Fourteenth Amendment Incorporate the Bill of Rights?</i> , 2 <i>Stanford L. Rev.</i> 5 (1949) | 48 |
| Faris, <i>The Nature of Human Nature</i> (1937) | 25 |
| Flack, <i>The Adoption of the Fourteenth Amendment</i> (1908) | 47 |
| Frankfurter, <i>Some Reflections on the Reading of Statutes</i> , 47 <i>Col. L. Rev.</i> 527 (1947) | 54 |
| Frazier, <i>The Negro in the United States</i> (1949) | 25, 30 |
| Gallagher, <i>American Caste and the Negro College</i> (1938) | 28 |
| Hamilton & Braden, <i>The Special Competence of the Supreme Court</i> , 50 <i>Yale L. J.</i> 1319 (1941) | 30 |
| Henderson, <i>The Plight of the Private College and What to do About It</i> , <i>The Educational Record</i> (October, 1949) | 18 |
| Henrich, <i>The Psychology of Suppressed People</i> (1937) | 26 |
| James, <i>The Philosophy of William James</i> , 128 (1925) | 28 |
| Johnson, <i>Patterns of Segregation. II, Behavioral Response of Negroes to Segregation and Discrimination</i> (1943) | 25, 26 |
| Klineberg, <i>Negro Intelligence and Selective Migration</i> (1935) | 23 |
| Klineberg, <i>Race Differences</i> (1935) | 23 |
| LaFarge, <i>The Race Question and the Negro</i> (1945) | 28 |
| Lasker, <i>Race Attitudes in Children</i> (1949) | 25 |
| Loescher, <i>The Protestant Church and the Negro</i> (1948) | 28 |
| Long, <i>Psychogenic Hazards of Segregated Education of Negroes</i> , 4 <i>The Journal of Negro Education</i> 343 (1935) | 25, 26 |

| | |
|--|------------|
| Lusky, <i>Minority Rights and the Public Interest</i> , 52 Yale L. J. 1 (1942) | 17 |
| Mannheim, K., <i>Diagnosis of Our Times</i> (1944) | 20 |
| Mangum, Jr., <i>The Legal Status of the Negro</i> (1947) | 26 |
| McLean, <i>Psychodynamic Factors in Racial Relations</i> 244 <i>Annals of the American Academy of Political and Social Science</i> , 159, 161 (March, 1946) | 26 |
| McWilliams, <i>Race Discrimination and the Law</i> , 9 Science and Society No. 1 (1945) | 26 |
| Montague, <i>Man's Most Dangerous Myth—The Fallacy of Race</i> (1945) | 23 |
| Morgan, <i>Horace Mann, His Ideas and Ideals</i> (1936) | 19 |
| Moton, <i>What the Negro Thinks</i> (1929) | 25, 26 |
| Myrdal, <i>An American Dilemma</i> (1944) | 25, 26, 27 |
| Park, <i>The Basis of Prejudice</i> , <i>The American Negro</i> , the <i>Annals</i> , Vol. 140 | 25 |
| Peterson & Lanier, <i>Studies in the Comparative Abilities of Whites and Negroes</i> , <i>Mental Measurement Monograph</i> (1929) | 23 |
| Report of the President's Committee on Civil Rights, <i>To Secure These Rights</i> (1947) | 26 |
| Report of the President's Commission on Higher Education, <i>Higher Education for American Democracy</i> , Vol. 1 (1947) | 21, 26 |
| Report of National Committee on Segregation in the Nation's Capital, <i>Segregation in Washington</i> (Nov., 1948) | 28 |
| Rose, <i>America Divided: Minority Group Relations in the United States</i> (1948) | 23 |
| Smythe, <i>The Concept of "Jim Crow"</i> , 27 <i>Social Forces</i> 48 (1948) | 27 |
| Testimony of R. Redfield in <i>Sweatt v. Painter</i> , October Term, 1949, No. 44 | 23 |
| Thompson, <i>Mis-Education for Americans</i> , 36 <i>Survey Graphic</i> , 119 (1947) | 28 |
| Thompson, <i>Separate But Not Equal, The Sweatt Case</i> , 33 <i>Southwest Review</i> 105 (1948) | 30 |

| | |
|---|------------|
| Tussman & ten Broek, <i>The Equal Protection of the Laws</i> , 37 Cal. L. Rev. 341 (1949) | 16, 30, 46 |
| Ware, <i>The Role of the Schools in Education for Racial Understanding</i> , 12 Journal of Negro Education 421 (1944) | 25, 28 |
| Young, <i>America's Minority Peoples</i> (1932) | 26 |

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| 36 Col. L. Rev. 283 (1936) | 30 |
| 40 Col. L. Rev. 531 (1940) | 30 |
| 49 Col. L. Rev. 629 (1949) | 46 |
| 46 Mich. L. Rev. 639 (1948) | 29 |
| 41 Yale L. J. 1051 (1931) | 30 |
| 56 Yale L. J. 1051 (1947) | 26 |
| Editorial Note, 19 Journal of Negro Education 4 (1949) | 30 |

IN THE
Supreme Court of the United States

October Term, 1949

No. 34

G. W. McLaurin,
Appellant,

vs.

OKLAHOMA STATE REGENTS FOR HIGHER
EDUCATION, BOARD OF REGENTS OF UNI-
VERSITY OF OKLAHOMA, *et al.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF OKLAHOMA

BRIEF FOR APPELLANT.

Opinion Below.

No opinion was filed by the court below. Findings of Fact and Conclusions of Law were filed at the close of the first hearing (R. 31-34). Journal entry of Judgment for this hearing was filed October 6, 1948 (R. 34-35). At the close of the hearing on appellant's motion to modify the order and judgment (R. 35-38), Findings of Fact and Conclusions of Law and Judgment were entered on November 22, 1948 (R. 39-44).

Statement of Jurisdiction.

The Supreme Court of the United States has jurisdiction to review this cause on appeal under the provisions of Title 28, United States Code, Section 1253, this being an appeal from an order denying, after notice and hearing, an injunction in a civil action required by an act of Congress to be heard and determined by a district court of three judges for the reason that in this action plaintiff-appellant sought to enjoin the enforcement of statutes of the State of Oklahoma,¹ and to enjoin the enforcement of an order made by an administrative board acting under state statutes.²

The District Court for the Western District of Oklahoma sitting as a specially constituted three-judge court rendered a final judgment in this cause sustaining the validity of an order made by an administrative board acting under statutes of the State of Oklahoma after the validity of state statutes and the order had been placed in issue by the appellant on the ground that they were repugnant to the Constitution of the United States.

Application for appeal was presented on January 18, 1949 (R. 45) and was allowed on the same day (R. 108). Probable jurisdiction was noted by this Court on November 7, 1949 (R. 111).

¹ Title 28, United States Code, Section 2281.

² Title 28, United States Code, Section 2281; See: *Oklahoma Natural Gas Co. v. Russell*, 261 U. S. 290.

The State Statutes and Administrative Order, the Validity of Which Is Involved.

The Oklahoma Statutes, the validity of which are involved are Sections 455, 456 and 457 of Title 70 of the Oklahoma Statutes (1941) which provide in part as follows:

70 O. S. 1941, Section 455, makes it a misdemeanor, punishable by a fine of not less than \$100 nor more than \$500 for

“any person, corporation or association of persons to maintain or operate any college, school or institution of this State where persons of both white and colored races are received as pupils for instruction,”

and provides that each day same is to be maintained or operated “shall be deemed a separate offense”.

70 O. S. 1941, Section 456, makes it a misdemeanor, punishable by a fine of not less than \$10 nor more than \$50 for any instructor to teach

“in any school, college or institution where members of the white race and colored race are received and enrolled as pupils for instruction,”

and provides that each day such an instructor shall continue to so teach “shall be considered a separate offense”.

70 O. S. 1941, Section 457, makes it a misdemeanor punishable by a fine of not less than \$5 nor more than \$20 for

“any white person to attend any school, college or institution, where colored persons are received as pupils for instruction,”

and provides that each day such a person so attends “shall be deemed a distinct and separate offense”.

After the hearing and judgment in this case the Oklahoma Legislature repealed these statutes and enacted similar statutes which contained the following proviso:

" . . . that the provisions of this Section shall not apply to programs of instruction leading to a particular degree given at State owned or operated colleges or institutions of higher education of this State established for and/or used by the white race, where such programs of instruction leading to a particular degree are not given at colleges or institutions of higher education of this State established for and/or used by the colored race; provided further, that said programs of instruction leading to a particular degree shall be given at such colleges or institutions of higher education upon a segregated basis. Segregated basis is defined in this Act as classroom instruction given in separate classrooms, or at separate times."

These statutes are set out in full in the Appendix.

At the hearing for a preliminary injunction the Court held that "insofar as any statute or law of the State of Oklahoma denies or deprives this plaintiff admission to the University of Oklahoma for the purpose of pursuing the courses of study he seeks, it is unconstitutional and unenforceable". The Court, however, refused to issue preliminary injunction (R. 34).³

³ "The court is of the opinion that insofar as any statute or law of the State of Oklahoma denies or deprives this plaintiff admission to the University of Oklahoma for the purpose of pursuing the course of study he seeks, it is unconstitutional and unenforceable. This does not mean, however, that the segregation laws of Oklahoma are incapable of constitutional enforcement. We simply hold that insofar as they are sought to be enforced in this particular case, they are inoperative" (R. 33).

5

**Order by Board of Regents of University of Oklahoma,
a State Board, Acting Pursuant to State Statutes, the
Validity of Which Is Involved.**

Subsequent to the above order of the Court and the filing of a motion for further relief by the plaintiff, the defendant Board of Regents of the University of Oklahoma acting as a state board pursuant to the statutes of Oklahoma adopted an order which appears in the minutes of said board as follows:

"That the Board of Regents of the University of Oklahoma authorize and direct the President of the University, and the appropriate officials of the University, to grant the application for admission to the Graduate College of G. W. McLaurin in time for Mr. McLaurin to enrol at the beginning of the term, under such rules and regulations as to segregation as the President of the University shall consider to afford to Mr. G. W. McLaurin substantially equal educational opportunities as are afforded to other persons seeking the same education in the Graduate College, and that the President of the University promulgate such regulations" (R. 97).

In refusing to enjoin the enforcement of this order the Court held as a matter of law that: "The Oklahoma statutes held unenforceable in the previous order of this Court have not been stripped of their validity to express the public policy of the State in respect to matters of social concern * * * " (R. 42).

The Court refused to enjoin the enforcement of either the statutes or the order, dismissed the complaint of the plaintiff, and rendered judgment for the defendants (R. 43-44).

Statement of the Case:

On the 5th day of August, 1948, appellant filed in the United States District Court for the Western District of Oklahoma a complaint required to be heard and determined by a three-judge court as provided by the then existing Section 266 of the Judicial Code seeking a preliminary and permanent injunction against the Oklahoma State Regents for Higher Education, the Board of Regents of the University of Oklahoma and the administrative officers of the University of Oklahoma enjoining them from enforcing Sections 455-457 of the Oklahoma statutes of 1941 under which the plaintiff and other qualified Negro applicants were excluded from admission to the courses of study offered only at the Graduate School of the University of Oklahoma.

The complaint alleged that the appellant, G. W. McLaurin, was qualified in all respects for admission to the Graduate School of the University of Oklahoma but was denied admission solely because of race or color pursuant to the statutes of the State of Oklahoma and the orders of the Board of Regents of the University of Oklahoma acting pursuant to said statutes. Motion was made for a preliminary injunction. A hearing was held on the motion for preliminary injunction upon an agreed statement of facts in which all of the material facts were admitted and agreed upon. It was admitted that appellant, McLaurin, was qualified in all respects other than race or color for admission to the University of Oklahoma and that the courses he desired were offered by the State of Oklahoma only at the University of Oklahoma (R. 20-21).

On the 6th day of October, 1948, the three-judge court filed a journal entry which said in part: "it is ordered and

decreed that insofar as Sections 455, 456 and 457, 70 O. S. 1941, are sought to be applied and enforced in this particular case, they are unconstitutional and unenforceable". The Court, however, refrained from granting any injunctive relief but retained jurisdiction of the subject matter for entering any further orders as might be deemed proper (R. 34-35).

On the 7th day of October, 1948, appellant filed a motion for further relief alleging that despite the prior ruling of the court, appellant had again been denied admission to the Graduate School of the University of Oklahoma and requested that the court enter an order requiring appellees to admit appellant to the "graduate school of the University of Oklahoma for the purpose of taking courses leading to a doctor's degree in education, subject only to the same rules and regulations which apply to other students in said school" (R. 38).

At the hearing on the motion for further relief it appeared that the appellant has been admitted to the Graduate School of the University of Oklahoma but on a segregated basis. At this hearing counsel for both parties agreed in open court as to the essential facts.

Judge MURRAH summed up the agreement as to essential facts as follows:

"Judge Murrah: The 13th of October admitted to the University of Oklahoma and to the courses which he sought to pursue in his application to the University proper officials on January 28, 1948, that he was admitted to the same classes that other students pursuing these courses, under the same instructors, and that he was assigned a permanent desk or chair

* It has been the policy of the lower court to secure agreements between counsel rather than to use testimony insofar as possible (R. 53).

in an anteroom to the main classroom where other students were seated, that the Exhibits 1 to 5, which have been introduced into evidence, fairly represent the physical conditions under which he was admitted, and where he now sits and now pursues his course of study.

"It is further admitted that he can from this position see the instructor and hear the lecture, that he can see all or most of his fellow students, and that he is not obstructed in listening to the lecture or pursuing his course, except under conditions which may be hereinafter discussed.

"Now it is further agreed that he is admitted to the library at the University of Oklahoma where all other students are admitted and on the same conditions, except that he is assigned a permanent desk on the landing above the second floor of the library, and that he is required by the administrative rules to occupy this desk while using the library, and in so doing he is required to leave his desk, go to the librarian, I suppose, and get the books he wishes, take them to his desk and use them there, while other students pursuing the same courses and using this library, go into the library, select the books they wish and take them home or any place that they may wish to pursue their studies" (R. 56).

It was admitted that Negroes constitute the only group which is segregated in the University of Oklahoma (R. 63-64) and McLaurin testified as to the conditions of segregation to which he had been subjected and the effect of such segregation upon him as a student. (R. 58-63).

⁵ The exhibits referred to appear in the Record on pages 92-96.

The order of the Board of Regents of the University of Oklahoma of October 10, 1948 which required the maintenance of rules and regulations as to segregation in the admission of the appellant appears in the Record at page 97.

The issue in the second hearing was clearly set forth in the motion for further relief (R. 35-38) and during the hearing (R. 50).

On the 22d day of November, 1948, the three-judge court issued Findings of Fact, Conclusions of Law and Journal Entry. In the Conclusions of Law, the Court held:

1. That the United States Constitution "does not authorize us to obliterate social or racial distinctions which the State has traditionally recognized as a basis for classification for purposes of education and other public ministrations. The Fourteenth Amendment does not abolish distinctions based upon race or color, nor was it intended to enforce social equality between classes and races".

2. "It is the duty of this court to honor the public policy of the State in matters relating to its internal social affairs quite as much as is our duty to vindicate the supreme law of the land."

3. "The Oklahoma statutes held unenforceable in the previous order of this court have not been stripped of their vitality to express the public policy of the State in respect to matters of social concern."

4. "We conclude therefore that the classification, based upon racial distinctions, as recognized and enforced by the regulations of the University of Oklahoma, rests upon a reasonable basis, having its foundation in the public policy of the State, and does not therefore operate to deprive this plaintiff of the equal protection of the laws" (R. 41-42).

The journal entry denied the relief prayed for, dismissed the complaint and entered judgment for the appellees (R. 44).

Subsequent to the hearing and judgment in the lower court, appellant, McLaurin, was permitted to go into the

regular classroom and to sit in a section surrounded by a rail on which there was a large sign stating "Reserved for Colored". At the beginning of the last semester, February, 1950, the rail and sign were removed. Appellant is now permitted to eat in the students' cafeteria but is required to sit at a segregated table. He is permitted to use the main library but only on a segregated basis.

Question Presented.

The Statement as to jurisdiction heretofore filed in this Court presented the following question:

Whether in providing graduate education in a state university the state may exclude a Negro student from the classroom and require him to participate in classes through an open doorway maintaining a spacial separation from other students?

Errors Relied Upon.

The District Court erred:

1. In refusing to enjoin the defendants as state officers from enforcing Sections 455, 456 and 457 of the Oklahoma Statutes of 1941 upon the ground that the enforcement of said statutes violated the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States and Title 8, Sections 41 and 43 of the United States Code.
2. In refusing to enjoin the defendants as state officers from enforcing the order of defendant Board of Regents of the University of Oklahoma requiring the segregation of plaintiff from all other students of the University of Oklahoma solely because of race or color upon the ground that said order is a violation of the equal protection and due

process clauses of the Fourteenth Amendment to the Constitution of the United States and Title 8, Sections 41 and 43 of the United States Code.

3. In ruling as a matter of law that the claim of the plaintiff to an education in a state institution on a non-segregated basis without distinction as to race or color was not a constitutional right but a mere matter of public policy of the State in regard to its internal social affairs.

4. In ruling as a matter of law that the plaintiff's right to public education without racial distinction, segregation or ostracism by the State of Oklahoma was a matter of the internal social affairs of the State of Oklahoma controlled solely by the public policy of the State and was not a right protected by the Constitution of the United States.

5. In ruling as a matter of law that the Oklahoma Statutes previously held by the Court to be unconstitutional and unenforceable could nevertheless be used as a constitutional basis for subsequent orders of the defendants to segregate plaintiff from all other students and thereby ostracize him solely because of race and color.

6. In ruling as a matter of law that state statutes previously declared unconstitutional as applied to plaintiff by state officers could be applied as a source of public policy to authorize the segregation of plaintiff from all other students of the University of Oklahoma solely because of race or color.

7. In ruling as a matter of law that the order requiring the segregation of plaintiff from the other students solely because of race or color rested "upon a reasonable basis and did not deprive the plaintiff of the equal protection of the laws or the right to liberty as guaranteed by the Constitution".

8. In ruling as a matter of law, in the absence of any evidence whatsoever to establish reasonableness of the classification, that the order requiring the segregation of the plaintiff from all other students solely because of race or color was a classification which rested upon a reasonable basis and did not violate the due process or equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

9. In ruling as a matter of law that the Fourteenth Amendment does not prohibit the State of Oklahoma from making racial distinctions among its citizens in the performance of its governmental function of providing public education at the graduate school level.

Summary of Argument.

The first hearing in this case involved the validity of the statutes of the State of Oklahoma which required complete exclusion of appellant from the University of Oklahoma solely because of race and color. The second hearing involved the enforcement of an order of the Board of Regents of the University of Oklahoma requiring the segregation of appellant within the University of Oklahoma. Both of the hearings involved the refusal of the appellees to permit the appellant to attend classes at the University of Oklahoma subject only to the same rules and regulations which apply to other students similarly situated.

In this case the obvious purpose of racial segregation in public education is made clearer than in any other case presented to this Court. To admit appellant and then single him out solely because of his race and to require him to sit outside the regular classroom could be for no purpose other than to humiliate and degrade him—to place a badge of inferiority upon him. His admission destroyed whatever

reason or policy which might have theretofore existed for requiring white and Negro students to attend separate institutions.

This case involves the efforts of the appellant, a Negro, to obtain graduate education at the University of Oklahoma subject only to the same rules and regulations which apply to other students in said school" (R. 38). He has been denied that right because of his race and color; "simply that, and nothing more". This the Constitution forbids. "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. For that reason, legislative classification or discrimination based on race alone has often been held to be a denial of equal protection."⁶ "Discriminations based on race alone are obviously irrelevant and invidious",⁷ and therefore arbitrary and unreasonable. Their imposition upon any citizen by any agency of government is reconcilable neither with due process of law⁸ nor with the equal protection of the laws.⁹

This Court, while recognizing the right of the state to make reasonable classifications, has consistently held that such classifications must be based upon some real or substantial difference in relation to a legitimate legislative end which has pertinence to the statute's objective.¹⁰ The

⁶ *Hirabayashi v. United States*, 320 U. S. 81, 100.

⁷ *Steel v. Louisville & Nashville Railroad Co.*, 323 U. S. 192, 203.

⁸ *Euchanan v. Warley*, 245 U. S. 60, 82.

⁹ *Shelley v. Kraemer*, 334 U. S. 1.

¹⁰ *Dominion Hotel v. Arizona*, 249 U. S. 265; *Maxwell v. Bugbee*, 350 U. S. 525; *Continental Baking Co. v. Woodring*, 286 U. S. 352; *Great Atlantic Tea Co. v. Grojean*, 301 U. S. 412; *Queenside Hills Co. v. Saxl*, 328 U. S. 80; *Kotch v. Board River Port Pilot Commissioner*, 330 U. S. 552; *Grossart v. Clary*, 335 U. S. 464.

State of Oklahoma has shown neither a real nor substantial difference nor the pertinence of alleged racial differences to graduate education. Where alleged differences on which a classification is based do not in fact exist, or cannot be reasonably or rationally related to the legislative objectives, the classification violates the equal protection clause.¹¹

However, the lower court in this case considered that it was under a duty "to honor the public policy of the state in matters relating to its internal social affairs quite as much as it is our duty to vindicate the supreme law of the land" (R. 42). The relief was then denied on the ground that: "We conclude therefore that the classification, based upon racial distinctions, as recognized and enforced by the regulations of the University of Oklahoma, rests upon a reasonable basis, having its foundation in the public policy of the State and does not therefore operate to deprive this plaintiff of the equal protection of the laws" (R. 42).

This decision is in direct conflict with the prior decisions of this Court with respect to the power of a state to classify in general as well as its prohibitions against governmentally imposed racial classifications.

The appellees rely solely upon the asserted validity of the separate but equal doctrine which they have extended to graduate education. This doctrine should be subjected to critical analysis and if found to be applicable to graduate education should be rejected by this Court as being in direct conflict with the intent and purpose of the Fourteenth Amendment and other decisions of this Court.

¹¹ *Quaker City Cab Co v. Pennsylvania*, 277 U. S. 389; *Southern R. R. Co. v. Greene*, 216 U. S. 400; *Troxar v. Raich*, 239 U. S. 33; *Smith v. Calhoun*, 283 U. S. 553; *Mayflower Farms v. Ten Eyck*, 297 U. S. 266; *Stanger v. Oklahoma*, 316 U. S. 535.

ARGUMENT.

I.

The exclusion of appellant from the regular classroom and the requirement of spacial segregation solely because of race and color is in violation of the Fourteenth Amendment.

The appellant herein having been admitted to the Graduate School of the University of Oklahoma, pursuant to an order of the court below, was thereupon compelled by the appellees to physically separate himself from the other students in his classroom solely because of his race and color. He was further required by appellees to physically segregate himself in the use of library facilities and in the students' cafeteria solely because he is a colored person of Negro ancestry. The appellees, in compelling appellant to take advantage of a course of study and physical facilities in perceptible isolation, solely because of his race and color, have effected a classification, the basis of which is clearly repugnant to constitutional guarantees of equal protection.

The basic purpose and intent of the equal protection clause of the Fourteenth Amendment was to prohibit a state from denying to its Negro citizens any rights given by the state to its white citizens. *Strauder v. West Virginia*, 100 U. S. 303; *Shelley v. Kraemer*, 334 U. S. 1. Another purpose was to insure that all persons similarly situated would receive like treatment and that no special groups or classes be singled out for favorable or discriminatory treatment, *Southern Railway v. Greene*, 216 U. S. 400; *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540; *Macell v. Bugbee*, 250 U. S. 525.

The secondary purpose is broader in scope than the first since it is not primarily concerned with racial distinctions but with discrimination generally. In determining whether state legislation subserves the second purpose, this Court has not prohibited all, but only certain types of legislative distinctions. On the other hand, racial classifications for governmental action are subjected to a more rigid test. The racial classification in this case meets neither test.

A. The limitation on a state's right to classify for legislative purposes.

This Court in interpreting the scope of equal protection has long recognized and approved the necessity for legislative classification as an indispensable concomitant of orderly government. *Bain Peanut Co. v. Pinson*, 282 U. S. 499. It has upheld reasonable classification even though incidental discrimination was an inevitable result. *Metropolitan Ins. Co. v. Brownell*, 294 U. S. 580; *Puget Sound Power and Light Co. v. Seattle*, 291 U. S. 619; *Board of Tax Commissioners v. Jackson*, 283 U. S. 527; *Patson v. Penn.*, 232 U. S. 138; *Clark v. Kansas City*, 176 U. S. 114. But this Court has not, even in approving such classification, given sanction without examination and scrutiny.¹² This Court has, in accordance with this procedure applied the familiar general test of constitutionality applicable to these cases, *i. e.*, a test which requires that the legislative classification be found to be based upon some real or substantial differences between classes which are relevant to the legitimate legislative end which is the object of the statute. *Dominion Hotel v. Arizona*, 249 U. S. 265; *Maxwell v. Bugbee*, *supra*; *Continental Baking Co. v. Woodring*, 286 U. S. 353; *Great Atlantic Tea Co. v. Grojean*, 301 U. S. 412; *Queenside Hills*

¹² Tussman & ten Broek, *The Equal Protection of the Laws*, 37 Calif. Law Review 341 (1949).

Co. v. Sael, 328 U. S. 80; *Kotch v. Board River Port Pilot Commissioner*, 330 U. S. 552; *Groessart v. Cleary*, 335 U. S. 464. If the differences are not reasonably perceptible, or are not relevant to the legislative end, the classification violates that which the equal protection clause secures. *Quaker City Cab. Co. v. Penn*, 277 U. S. 389; *Southern RR. Co. v. Greene*, 216 U. S. 400; *Truax v. Raich*, 239 U. S. 33; *Smith v. Cahoon*, 283 U. S. 553; *Mayflower Farms v. Ten Eyck*, 297 U. S. 266; *Skinner v. Oklahoma*, 316 U. S. 535.

This formula has been consistently followed by this Court without deviation since the adoption of the Fourteenth Amendment as the most effective method of giving life and substance to the equal protection clause while at the same time leaving to the states freedom to deal with problems of everyday government.

In this case Oklahoma has singled out one group of its citizens to be segregated from all other citizens in the enjoyment of governmental facilities. This is not a case of voluntary separation on the part of either the Negro or non-Negro students, it is governmentally imposed segregation. Such a classification must either meet the test set out above or be declared unconstitutional. To test the constitutionality of this classification we must examine the objective Oklahoma is attempting to accomplish in offering educational facilities for graduate education and determine what relevance, if any, race, ancestry or skin pigmentation may have to such objective.

The Objectives of Public Education.

As a way of life, we are dedicated to a system which places reliance upon rational persuasion rather than upon force and coercion.¹³ It is our belief that given a choice,

¹³ For a discussion of differences between ours and a totalitarian system and discussion of national interest in elimination of racial discrimination see: Lusk, *Minority Rights and the Public Interest*, 52 Yale Law Journal 1 (1942).

our citizenry will choose the rational and wise. *Lorrell v. Griffin*, 303 U. S. 444; *Schneider v. State*, 308 U. S. 147; *Hague v. C. I. O.*, 307 U. S. 496. Mr. Justice BRANDEIS, in a concurring opinion in *Whitney v. California*, 274 U. S. 357, 375, stated this basic philosophy succinctly when he said:

“Those who won our independence believed that the final end of the State was to make men free to develop their faculties; that in its government the deliberative forces should prevail over the arbitrary.”¹⁴

For that reason, our society is dedicated to the fullest personal and political freedom of the individual. In order to make certain that our citizens are equipped to make rational decisions and thus maintain and preserve our democratic institutions, it is vital that through the medium of education their individual skills, values, belief in the basic tenets of democracy be developed. So important has this become that education is no longer left solely to the parent or to a few philanthropists.¹⁵ It has become one of the

¹⁴ Cf. *Schneiderman v. United States*, 320 U. S. 118, 120 (1943):

“While it is our high duty to carry out the will of Congress, in the performance of this duty we should have a jealous regard for the rights of petitioner. We should let our judgment be guided so far as the law permits by the spirit of freedom and tolerance in which our nation was founded, and by the desire to secure the blessings of liberty in thought and action to all those upon whom the right of American citizenship has been conferred by statute, as well as to the native born. And we certainly should presume that Congress was motivated by these lofty principles.”

See also: *Baumgartner v. U. S.*, 322 U. S. 665; *Hartzel v. U. S.*, 322 U. S. 680.

¹⁵ “The Plight of the Private Colleges and What to do About it” by Algo D. Henderson, October, 1949 issue of *The Educational Record*, published by the American Council on Education.

highest functions of state government.¹⁶ Thus, the forty-eight states have almost uniformly undertaken the function of providing educational benefits at a minimum cost to all in order that they might endeavor to develop the fullest intellectual and moral qualities and to thereby insure the most effective participation in the responsibility and duties of citizenship.

Horace Mann described the purpose of education in a democratic society as follows:¹⁷

"Education must be universal * * * The theory of our government is—not that all men, however unfit, shall be voters—but that every man, by the power of reason and the sense of duty, shall become fit to be a voter. Education must bring the practice as nearly as possible to the theory. As the children now are, so will the sovereigns soon be. How can we expect the fabric of the government to stand, if vicious materials are daily wrought into its framework. Education must prepare our citizens to become municipal officers, intelligent jurors, honest witnesses, legislators, or competent judges of legislation—in fine, to fill all the manifold relations of life. For this end, it must be universal."

Mortimer J. Adler, professor of law at the University of Chicago, states the purpose in these terms.¹⁸

"Liberal education is developed only when a curriculum can be devised which is the same for all men,

¹⁶ At common law, the parent's control over his child extended to education of the child. The parent's common law rights and duties in this regard "have been generally supplemented by constitutional and statutory provisions, and it is now recognized that education is a function of the government". 47 Am. Jur. Schools, Section 6, page 299.

¹⁷ *Horace Mann—His Ideas and Ideals* by Joy Elmer Morgan, Natl. Home Foundation, Washington, D. C., 1936, page 98.

¹⁸ *Education for Freedom, a Series of Radio Lectures*, sponsored and published by the Education for Freedom, Inc., New York, 1943. Other lectures by Mark Van Doren and Dr. Robert M. Hutchins, among others, also included pertinent remarks on this subject.

and should be given to all men, because it consists in those moral and intellectual disciplines which liberate men by cultivating their specially rational power to judge freely and to exercise free will. * * *

“ * * * Only when all young men and women are prepared by liberal education for the responsibilities of citizenship, and the obligations of the moral and intellectual life, will the world community come into existence. Without it world peace is impossible.”

Education is not only a component part of true democratic living, but is the very essence of and medium through which democracy can be effected. The intent of the framers of the Fourteenth Amendment was indicated in the 43rd Congress in 1874 by these words: “ * * * that all classes should have the equal protection of American law and be protected in their inalienable rights, *those rights which grow out of the very nature of society, and the organic law of this country.*”¹⁹ In 1943, an eminent sociologist and economist, Dr. Karl Mannheim, then Professor of Economics at London School of Economics, said:

“Finally, there is a move towards a true democracy arising from dissatisfaction with the infinitesimal contribution guaranteed by universal suffrage, a democracy which through careful decentralization of functions allots a creative social task to everyone. The same fundamental democratization claims for everyone a share in real education, one which no longer seeks primarily to satisfy the craving for social distinction, but enables us adequately to understand the pattern of life in which we are called upon to live and act.”²⁰

¹⁹ Congressional Globe, Forty-third Congress, May 22, 1874.

²⁰ Mannheim, Karl, “Diagnosis of Our Time”, Oxford University Press, 1944, page 177.

Finally, in 1947, seventy-three years after the 43rd Congress, the President's Committee on Higher Education took an unequivocal position against segregation in education. In terms of a definition of the role played by education the Report said:

" * * * the role of education in a democratic society is at once to insure equal liberty and equal opportunity to differing individuals and groups, and to enable the citizens to understand, appraise, and redirect forces, men, and events as these tend to strengthen or to weaken their liberties."²¹

Mr. Justice FRANKFURTER stated in *Illinois ex rel. McCollum v. Board of Education*, 333 U.S. 203, 216, 217:

"The sharp confinement of the public schools to secular education was a recognition of the need of a democratic society to educate its children, insofar as the State undertook to do so, in an atmosphere free from pressures in a realm in which pressures are most resisted and where conflicts are most easily and most bitterly engendered. Designed to serve as perhaps the most powerful agency for promoting cohesion among a heterogeneous democratic people, the public school must keep scrupulously free from entanglement in the strife of sects."

It is, therefore, evident that the objective of public education is to equip our citizens with information and skills in order that they may effectively participate in our democratic processes. Public education is no longer a privilege of the few. It is no longer a minor function of government. It is one of the most important of governmental functions.

²¹ Report of the President's Commission on Higher Education, *Higher Education for American Democracy*, Govt. Printing Office, Washington, 1947, Vol. I, page 5.

Neither Race, Ancestry Nor Skin Pigmentation of Students Has Any Pertinence to the Objectives of Public Education.

The requirement of spacial segregation in education in Oklahoma is based solely on race or color, "simply that and nothing more." Solely because appellant is a Negro he has been denied rights enjoyed as a matter of course by all other qualified students.²² Appellant's individual rights are lost in the racial group classification.

Appellees have so far made no effort to show any relevancy between compulsory racial segregation and the lawful objectives of public education. On the other hand, it is evident that the State of Oklahoma, while professing equality within a segregated system, has in fact consistently maintained the objective of inequality insofar as Negroes are concerned. Prior to 1948, Negroes were completely excluded from graduate and professional training.²³ After the decision in the *Sipuel* case the appellees continued the exclusion of Negroes from graduate and professional schools. The conditions under which appellant was admitted after the first order in this case was a continuation of the same policy of inequality.

The practice of racial segregation has sometimes been rationalized by the claim that there are inherent differences between the races. This essential racist view assumes that minorities belong to inferior races, and that racial intermixture results in the degeneracy of the superior race. After an exhaustive study of all scientific data referring to

²² Counsel for all parties agreed that: "the only group of citizens attending the University of Oklahoma who are segregated are Negroes" (R. 63).

²³ *Sipuel v. Board of Regents, et al.*, 332 U. S. 631.

the intellectual capacity of different racial groups, an expert witness testified in another pending case to this effect:

"The conclusion then, is that differences in intellectual capacity or inability to learn have not been shown to exist as between Negroes and whites, and further, that the results make it very probable that if such differences are later shown to exist, they will not prove to be significant for any educational policy or practice."²⁴

One of the leading sociologists in the field of race relations has pointed out: "there is not one shred of scientific evidence for the belief that some races are biologically superior to others, even though large numbers of efforts have been made to find such evidence."²⁵ There is no rational basis, no factual justification for segregation in education on the grounds of race or color. The racist premise is completely invalid, and no act of segregation based upon it can be upheld as reasonable.²⁶

²⁴ Testimony of Dr. Robert Redfield in *Sweatt v. Painter, et al.*, October Term, 1949, No. 44.

²⁵ Rose, Arnold M., *America Divided: Minority Group Relations in the United States*, published by Knopf, New York City, 1948.

²⁶ Otto Klineberg, *Race Differences*, page 343, 1935; Montague, M. F. A., *Man's Most Dangerous Myth—The Fallacy of Race*, Columbia University Press, New York, 1945, page 188, "The Black and White of Rejections for Military Service", American Teachers Association, August, 1944, page 29; Otto Klineberg, *Negro Intelligence and Selective Migration*, New York, 1935; J. Peterson & L. H. Lanier, *Studies in the Comparative Abilities of Whites and Negroes*, Mental Measurement Monograph, 1929; W. W. Clark, *Negro Children*, Educational Research Bulletin, Los Angeles, 1923.

Compulsory Racial Segregation in Public Education Is an Arbitrary and Unlawful Classification Within the General Limitations Upon Right of States to Classify Its Citizens.

This Court had no hesitancy in striking down compulsory residential segregation predicated upon racial theories:

"It is the purpose of such enactments, and it is frankly avowed it will be their ultimate effect, to require by law at least in residential districts, the compulsory separation of the races on account of color. Such action is said to be essential to the maintenance of the purity of the races, although it is to be noted in the ordinance under consideration that the employment of colored servants in white families is permitted, and nearby residences of colored persons not coming within the blocks, as defined in the ordinance, are not prohibited."²⁷

State ordained segregation having no rational foundation is a particularly invidious policy which needlessly penalizes Negroes, demoralizes others, and tends to destroy democratic institutions. If the racial factor has no scientific basis, then the ills suffered as a result of racial segregation in graduate education are doubly harmful. We have pointed out above the purposes and objectives of education. In light of those objectives, segregation is an abortive factor to the full realization of the objective of education.

First, segregation prevents both the Negro and white student from obtaining a full knowledge and understanding of the group from which he is separated, thereby infringing upon the inherent rights of an enlightened citizen. It has been scientifically established that no child at birth pos-

²⁷ *Buchanan v. Warley*, 245 U. S. 60, 81; see also: *Shelley v. Kraemer*, *supra*.

sesses either an instinct or even a propensity towards feelings of prejudice or superiority. These attitudes, when and if they do appear, are but reflections of the attitudes and institutional ideas evidenced by the adults about him.²⁸ The very act of segregation tends to crystallize and perpetuate group isolation, and serves, therefore, as a breeding ground for unhealthy attitudes.²⁹

Secondly, a feeling of distrust for the minority group is fostered in the community at large, a psychological atmosphere which is most unfavorable to the acquisition of a proper education. Still another result of segregation in education with respect to the general community is that it accentuates imagined differences between Negroes and others.³⁰

The uncontradicted testimony of the appellant in this case shows the effect of racial segregation upon him in his effort to obtain an education (R. 58-63). As a matter of fact, the effect on McLaurin is the inevitable result of compulsory segregation and there is a corresponding harmful

²⁸ Robert E. Park, *The Basis of Prejudice*, *The American Negro*, the Annals, Vol. 140, pages 11-20 as cited in *The Negro in the United States* by E. Franklin Frazier, McMillan Co., New York, 1949, page 668; Elsworth Faris, The chapter on "The Natural History of Race Prejudice", from *The Nature of Human Nature*, New York, 1937, page 354.

²⁹ Bruno Lasker, *Race Attitudes in Children*, New York, 1949, page 48; Caroline F. Ware, "The Role of the Schools in Education for Racial Understanding", 12 *Journal of Negro Education* No. 3, pp. 421-431 (1944); Robert R. Moton, *What the Negro Thinks* (Garden City, N. Y., 1929), page 13; Howard Hale Long, "Psychogenic Hazards of Segregated Education of Negroes", *The Journal of Negro Education*, Vol. IV, No. 3, July, 1935, page 343; see also: Charles S. Johnson, *Patterns of Segregation* (1943), Pt. II, "Behavioral Response of Negroes to Segregation and Discrimination".

³⁰ As stated by Gunnar Myrdal in *An American Dilemma*, New York, 1944, Vol. 1, page 625: "But they are isolated from the main body of whites, and mutual ignorance helps reinforce segregative attitudes and other forms of race prejudice."

effect on the non-segregated group and society in general. Deutscher and Chein, *The Psychological Effect of Enforced Segregation: A Survey of Social Science Opinion*, 26 *Journal of Psychology* 259 (1948); Cooper, *The Frustrations of Being a Member of a Minority Group: What Does It Do to the Individual and to His Relationships With Other People?*, 29 *Mental Hygiene* 189 (1945); McLean, *Psychodynamic Factors in Racial Relations*, 244 *Annals of the American Academy of Political and Social Science* 159, 161 (March, 1946).

Qualified educators, social scientists, and other experts have uniformly expressed their realization of the fact that "separate" is irreconcilable with "equality".³¹ There can be no equality since the very fact of segregation establishes a feeling of humiliation and deprivation to the group considered to be inferior.³²

Probably the most irrevocable and deleterious effect of segregation upon the minority group is that it imposes a

³¹ Gunnar Myrdal, *An American Dilemma*, New York, 1944, Vol. 1, page 580; Charles S. Johnson, *Patterns of Segregation*, New York, 1943, page 4, 318; Charles S. Mangum, Jr., *The Legal Status of the Negro*, Chapel Hill, 1940; Report of the President's Committee on Civil Rights, "To Secure These Rights", Government Printing Office, Washington, 1947; Report of the President's Commission on Higher Education, "Higher Education for American Democracy", Vol. I, Government Printing Office, Washington, 1947; Max Deutscher and Isidor Chein (with the assistance of Natalie Sadigur), "The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion", *The Journal of Psychology*, 1948, 26, 259-287.

³² Carey McWilliams, "Race Discrimination and the Law", *Science and Society*, Vol. IX, No. 1, 1945: 56 *Yale Law*, 1947, pages 1051-1052, 1059; Bond, "Education of the Negro in the American Social Order", 1934, page 385; Moton, "What the Negro Thinks", 1922, page 99; Bunche, "Education in Black and White", 5 *Journal of Negro Education*, 1936, page 351; Long, "Some Psycho-Genic Hazards of Segregated Education of Negroes", 4 *Journal of Negro Education*, 1935, pages 336-343; Henrich, "The Psychology of Suppressed People", 1937, page 52; Dollard, "Caste and Color in a Southern Town", 1937, pages 269, 441; Young, "America's Minority Peoples", 1932, page 585.

badge of inferiority upon the segregated group.³³ This badge of inferior status is recognized not only by the minority group, but by society at large. As Myrdal has pointed out:

"Segregation and discrimination have had material and moral effects on whites, too. Booker T. Washington's famous remark that the white man could not hold the Negro in the gutter without getting in there himself, has been corroborated by many white southern and northern observers. Throughout this book, we have been forced to notice the low economic, political, legal and moral standards of Southern whites—kept low because of obsession with the Negro problem. Even the ambition of Southern whites is stifled partly because, without rising far, it is so easy to remain 'superior' to the held-down Negroes."³⁴

A definitive study of the scientific works of contemporary sociologists, historians and anthropologists conclusively document the proposition that the intent and result of segregation are the establishment of an inferiority status. And a necessary corollary to the establishment of this value

³³ Hugh H. Smythe, "The Concept of 'Jim Crow'," *Social Forces*, Vol. 27, No. 1, Oct., 1948, page 48: "Jim Crow" as used in a sociological context thus indicates for a specific social group the Negro's awareness of his badge of inequality which he learns through the operation of a 'Jim Crow' concept in his every day living. This pattern of existence has become so much a part of the nation's social structure that it has become synonymous with the words 'segregation' and 'discrimination', and at times when 'Jim Crow' is indexed some authors have indexed it as a cross reference for these terms."

³⁴ Gunnar Myrdal, *op. cit.*, Vol. I, page 644.

judgment is the deprivation suffered by both the minority and majority groups.³⁵

³⁵ Barnuch, *Glass House of Prejudice*, William Morrow and Co., 1946, pages 66-70; Gallagher, Buell G., *American Caste and the Negro College*, Columbia University Press, 1938, page 94: "Wherever possible, the caste line is to keep all Negroes below the level of the lowest whites. This is the first and deepest meaning of 'separate but equal'". Page 105: "Not the least important aspect of the caste system is its results in seriously malconditioning the individuals whose psychological growth is strongly affected by a caste divided society. These influences are not limited to the Negro caste. They stamp themselves upon the dominant caste as well"; LaFarge, John, *The Race Question and the Negro*, New York: Longmans Green & Co., 1945, page 159: "Segregation, as a compulsory measure based on race, imputes essential inferiority to the segregated group. Segregation, since it creates a ghetto, brings in the majority of instances, for the segregated group, a diminished degree of participation in those matters which are ordinary human rights, such as proper housing, educational facilities, police protection, legal justice, employment, * * * Hence it works objective injustice. So normal is the result for the individual that the result is rightly termed inevitable for the group at large"; James, "The Philosophy of William James", 1925, page 128: "Properly speaking, a man has as many social selves as there are individuals who recognize him and carry an image of him in their mind. To wound any one of these images is to wound him"; Loescher, Frank S., *The Protestant Church and the Negro*, Association Press, 1948: "(Segregation) is, in itself, an implication of inferiority, an inferiority not only of status but of essence, of being"; Thompson, "Mis-education for Americans", Survey Graphic, Vol. 36, Jan., 1947, page 119: "Education for segregation, if it is to be effective, must perpetuate beliefs which define the Negro's status as inferior, which emphasize superficial differences, or which in any way suggest that the Negro is a lower order of being and therefore should not be expected to be treated like a white person". Page 120: "Mis-education for segregation has deleterious effects on both Negroes and whites. It requires mental and emotional gymnastics on both sides to adjust (or attempt to adjust) to the many logical and ethical contradictions of segregation. The situation is crippling to the personalities of both Negro and white Americans"; Ware, "The Role of the Schools in Education for Racial Understanding", 12 Journal of Negro Education, 421 (1944), page 424: "A segregated school system presents almost insuperable obstacles. In such a system the social situations may be made worse by vicious attitudes, or uplifted by sympathetic ones. But the sheer fact of segregation stands as an eternal reminder to every white child, every day, that the Negro or Mexican children are being kept away from his school"; *Segregation in Washington*, A Report of the National Committee on Segregation in the Nation's Capital, November, 1948, pages 76, 77.

There is no compensatory value to society as a result of the ills suffered from segregation. As we have pointed out above, segregation in education has produced deleterious effects upon both the majority and minority groups. We have similarly found that the only logical premise upon which segregation *could* be based—*i. e.*, the existence of differences in intellectual ability as between the races—has been completely discredited by scientific studies. It would appear then, that the only remaining rationale for segregation is that although it might be admitted that racial segregation has no validity, the prevailing customs and mores require that segregation be broken down in a gradual manner.³⁰¹ However, all available data which refers to instances where segregation did exist but was subsequently broken down, controvert this assumption.

The experiences of states with a racial and social policy similar to that of Oklahoma demonstrate that this policy may be abandoned at least at the graduate and professional level to the advantage of all concerned. The University of Maryland has admitted Negroes into its law school since 1935. Negroes have freely attended the University of West Virginia since 1939. The University of Arkansas in 1947 admitted a Negro to its law school on a segregated basis. Before the term had ended, it had abandoned the segregation, and now Negroes are attending its law school and School of Medicine just like any other students. The University of Delaware was opened to Negroes, as is the University of Kentucky. In September, 1949, a Negro was admitted into the University of Texas School of Medicine. In all instances there was considerable initial resistance by governmental officials to the abandonment of segregation.

³⁰¹ See Note 46 Mich. L. Rev. 639 (1948).

Yet in each instance the experiment has been beneficial and successful.³⁷

In the absence of any scientific basis for enforced racial segregation, there can be no relationship between alleged racial differences and the lawful objectives of public education. Applying the recognized standard for measuring the constitutionality of general classifications it is clear that the classification in this case fails to meet that standard.

B. Classifications by governmental agencies based solely on race or ancestry are particularly odious to our principles of equality.

The compulsory racial segregation in this case not only fails to meet the test as to general state classifications but it is also in direct conflict with the special test as to racial and religious classifications. As to those matters which are not usually the subject of state regulation because specifically prohibited by the federal constitution, this Court has required the application of another and more stringent examination into constitutionality; i. e., there must be a conclusive showing of actual differences and pertinence must be justified. *United States v. Carolene Products Co.*,

³⁷ Editorial Note, *Journal of Negro Education*, December, 1949, pages 5-6. See also: Charles H. Thompson, *Separate But Not Equal, The Sweatt Case*, 33 *Southwest Review*, 105, 111 (1948). Frazier, *The History of the Negro in the United States* (1950), chap. 17.

³⁸ It is sometimes said that where the governmental action is based upon race or color, there is presumption of unconstitutionality. See Tussman and Ten Brook, *op. cit. supra* footnote 12; Note, 36 *Col. L. Rev.*, 283 (1950); 40 *Col. L. Rev.*, 531 (1940); 41 *Yale L. J.* (1931); Hamilton & Broden, *The Special Competence of the Supreme Court*, 50 *Yale L. J.* 1319, 1349-1357 (1941). This appears to be similar to the Court's placement of freedom of speech, press, assembly and religion in a preferred position. See, e. g., *Marsh v. Alabama*, 326 U. S. 501, 508, 41 *S. Ct.* 246; *Virginia State Board of Education v. Barnette*, 319 U. S. 624, 775.

304 U. S. 144, note 4; *Hirabayashi v. United States*, 320 U. S. 81. This Court has allowed invasion of this latter area only when an overwhelming public necessity was clearly shown to exist. *Korematsu v. United States*, 323 U. S. 214; *Hirabayashi v. United States*, *supra*. In the absence of an overwhelming public necessity, this Court has never allowed governmental regulation of this constitutionally preferred area and has nullified all such unreasonable and irrational classifications.

The end sought herein by the Oklahoma legislature and the appellee is the higher education of its citizens. It is now well established that a state in providing higher education for its citizenry must afford equal protection and equal opportunity to all under constraint of the equal protection clause of the Fourteenth Amendment. Therefore what relevancy race has to the objective sought and what are the real differences between appellant and his classmates which justify the classification here made are the questions to which this Court would ordinarily seek answers. In this instance, however, it is entirely unnecessary to seek an answer, for the appellees admit that appellant's race is the only difference between appellant and his classmates and they have never contended that race has any relevancy to higher education. The usual inquiry into these matters is thus eliminated and the question involved is reduced to an inquiry as to whether race or color alone may be made the basis of a classification by the state.

This Court has said that race or color may not, in view of the equal protection clause of the Fourteenth Amendment, be made the basis of classification by the state. Distinctions among citizens under constraint of state power which are based solely upon the race or color of such citizens have incurred such constitutional odium that they are

presumptively void. This Court has, in recent decisions, vigorously disparaged and censored them.

In *Hirabayashi v. United States*, *supra*, Mr. Justice STONE speaking for the Court said at 100:

“Distinctions between citizens solely because of their ~~ancestry~~ are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. For that reason, legislative classification or discrimination based on race alone has often been held to be a denial of equal protection.”

Mr. Justice MURPHY concurring at page 110, said:

“Distinctions based on color and ancestry are utterly inconsistent with our traditions and ideals.”

In *Nixon v. Herndon*, 273 U. S. 536, Mr. Justice HOLMES stated for the Court at 541:

“States may do a good deal of classifying that it is difficult to believe rational, but there are limits, and it is * * * clear * * * that color cannot be made the basis of a statutory classification.”

In *Steele v. L. N. R. R. Co.*, 323 U. S. 192, Mr. Justice MURPHY concurring with the majority which had condemned the use of Congressional authority to discriminate against Negro workers said at 209:

“Nothing can destroy the fact that the accident of birth has been used as the basis to abuse individual rights by an organization purporting to act in conformity with its Congressional mandate. * * * A sound democracy cannot allow such discrimination to go unchallenged. Racism is far too virulent today to permit the slightest refusal, in the light of a Constitution that abhors it, to expose and condemn * * *.”

In *Korematsu v. United States*, 323 U. S. 214, Mr. Justice BLACK said at 216:

" * * * all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can."³⁹

In *Oyama v. California*, 332 U. S. 633, Justices BLACK and DOUGLAS concurring with the majority added at 649:

" * * * we have recently pledged ourselves to co-operate with the United Nations to 'promote * * * universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion'. How can this nation be faithful to this international pledge if state laws which bar land ownership and occupancy by aliens on account of race are permitted to be enforced?"

In *Takahashi v. Fish and Game Commission*, 334 U. S. 410, the Court said via Mr. Justice BLACK at 418:

"It does not follow, as California seems to argue, that because the United States regulates immigration and naturalization in part on the basis of race and color classifications, a state can adopt one or more of the same classifications to prevent lawfully admitted aliens within its borders from earning a living in the same way that other state inhabitants earn their living."

³⁹ See: *Shelley v. Kraemer, supra*; *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen*, 323 U. S. 210. Although not directly in point, are also links in the development of this principle.

The only occasions on which this Court has sustained such classifications have been those occasions on which it has been conclusively demonstrated that an overwhelming public necessity compelled it. *Hirabayashi v. United States*, *supra*, *Korematsu v. United States*, *supra*. No overwhelming public necessity is claimed here.⁴⁰

While Chief Justice TANEY, in the case of *Dred Scott v. Sandford*, 60 U. S. 393, 407, decreed that Negroes had "for more than a century before been regarded as beings of an inferior order; and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect"; this Court after the adoption of the Fourteenth Amendment held that the Amendment was framed and adopted to protect the colored race, which had long been regarded as an "inferior and subject race" against all state action designed "to perpetuate the distinctions that had before existed". *Strauder v. West Virginia*, 100 U. S. 303, 306.

The separation of McLaurin from the other students can have but one purpose—to give notice to McLaurin, his fellow students and the world at large, that the State of Oklahoma has decreed that McLaurin belongs to an "inferior order" and is "altogether unfit to associate with the white race" in their mutual efforts to secure an education. This position while in complete accord with the doctrine of the *Dred Scott* case is in direct opposition to the purpose and intent of the Fourteenth Amendment as set forth in *Strauder v. West Virginia* and more recent cases cited above.

⁴⁰ The Court below sustained the classification relying solely upon some vague, undefined notions of state public policy.

C. The public policy of Oklahoma of requiring racial segregation in graduate public education is in direct conflict with the federally protected right of appellant to be free from state imposed racial distinctions.

The decision of the lower court has a very narrow basis: "We conclude, therefore, that the classification, based upon racial distinctions, as recognized and enforced by the regulations of the University of Oklahoma, rests upon a reasonable basis, having its foundation in the public policy of the State, and does not therefore operate to deprive this plaintiff of the equal protection of the laws" (R. 42).

The preceding sections have discussed the absence of rational basis for the classification in this case. As to the question of state public policy in regard to peace and order, this Court has consistently held that this is no justification for the denial of constitutional rights to which one would otherwise be entitled. In *Buchanan v. Warley*, 245 U. S. 60, the State of Kentucky attempted to justify its ordinance segregating whites and Negroes into separate blocks on the ground that unless this was done riots and disorder might result. That argument this Court dismissed with this statement:

"It is urged that this proposed segregation will promote the public peace by preventing race conflicts. Desirable as this is, and important as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution," page 81.

In *Shelley v. Kraemer*, 334 U. S. 1, this Court reaffirmed this principle that the preservation of public peace and good order does not suffice to excuse unconstitutional governmental action which effects a classification or distinction based upon race. See also: *Bridges v. California*, 314 U. S. 252; *Cantwell v. Connecticut*, 310 U. S. 296; *Morgan v. Virginia*, 328 U. S. 373; *Thornhill v. Alabama*, 210 U. S. 88; *Whitney v. California*, *supra*.

II.

The separate but equal doctrine should be subjected to critical analysis and if found to be applicable to this case should be overruled.

The District Court held that:

"The Constitution from which this court derives its jurisdiction does not authorize us to obliterate social or racial distinctions which the State has traditionally recognized as a basis for classification for purposes of education and other public ministrations. The Fourteenth Amendment does not abolish distinctions based upon race or color, nor was it intended to enforce social equality between classes and races. * * * It is only when such distinctions are made the basis for discrimination and unequal treatment before the law that the Fourteenth Amendment intervenes. * * * It is the duty of this court to honor the public policy of the State in matters relating to its internal social affairs quite as much as it is our duty to vindicate the supreme law of the land" (R. 42).

The cases cited by the Court in support of the separate but equal doctrine were: *Plessy v. Ferguson*, 163 U. S. 537; *Cummings v. United States*, 175 U. S. 528; *Gong Lum v. Rice*, 275 U. S. 78; *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337.

A. The problem with which *Plessy v. Ferguson* dealt is fundamentally different from the problem presented here.

In *Plessy v. Ferguson*, a Louisiana statute, which required the separation of the races in railroad coach accommodations, was held to be a proper exercise of state au-

thority under the Fourteenth Amendment as long as the facilities provided for Negroes were equal to those provided for whites. It is true that the Court cited several state cases condoning racial segregation in educational facilities, but the decision itself was necessarily limited to the problem before it.

Equality of transportation facilities presents an entirely different question from that of equality of educational opportunities, which is involved here. In transportation, the primary considerations are the type of comfort and convenience, courtesy, fare, speed, time of arrival and departure. In determining whether equality of opportunity has been offered in education, one must consider the learning process, the types of offerings provided, the necessity of education to the development of citizenship, loyalties and devotion to democratic beliefs, and the development of an individual as a personal and national asset; in short the whole function of education in a democracy. This necessarily requires consideration of psychological, sociological and spiritual factors in addition to pure physical measurements. Moreover, even as to transportation the application of *Plessy v. Ferguson*, has been considerably curtailed by *Morgan v. Virginia*, *supra*, and *Bob-Lo Excursion Co. v. Michigan*, 333 U. S. 28.⁴¹

It is to be remembered that *Plessy v. Ferguson* came to this Court for review of a judgment on a demurrer and that the sole question for consideration was a bare legal proposi-

⁴¹ We believe that the Court's decision in *Plessy v. Ferguson*, even as limited to the subject matter of transportation, was wrongly decided. The pernicious effect of that decision on transportation, as has been stated above, has been considerably curtailed by virtue of *Morgan v. Virginia*, *supra*, and *Bob-Lo Excursion Co. v. Michigan*, *supra*. It is our hope that decision by this Court in *Henderson v. United States*, October Term, 1949, now pending, will overrule that case.

tion as to the extent of state power. When that case was decided, this Court had had no experience in dealing with the type of question raised, and might have believed in all sincerity that assimilation of the Negro in American culture was impossible and that the experiment which the Fourteenth Amendment was launching was liable to end in tragic failure. Experience has since demonstrated that such fears were groundless, and that individual development is determined by opportunity and not by race. In addition, the Court had before it no facts to show that racial discrimination would be the natural result of the application of the "separate but equal" formula, and it presumed that no such discriminatory effect would result. There this Court said at 550, 551:

" * * * so far, then, as a conflict with the 14th Amendment is concerned, the case reduces itself to the question whether the statute of Louisiana is a reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature. In determining the question of reasonableness it is at liberty to act with reference to the established usages, customs, and the traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable or more obnoxious to the 14th Amendment than the Acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislature."

The record in this case, on the other hand, conclusively shows that the separation of the races in Oklahoma with regard to the availability of graduate education produces in-

equality of treatment and of opportunity, and that such inequality is a direct concomitant of this separation. Whatever may be the view as to the correctness of the decision in *Plessy v. Ferguson*, there are such intrinsic differences between the question dealt with there and those now being raised that it will be of little assistance in determining whether the equal protection clause prohibits compulsory racial segregation in graduate education.

B. This is not an appropriate case for the application of the doctrine of *stare decisis*.

If *Plessy v. Ferguson*, and the other cases relied upon by the Court below are definitive of the law presently applicable to this case, we would urge that they be discarded in light of changed conditions and of the necessity for different rules to meet new conditions. As Mr. Justice DOUGLAS said:

"The fact is that security can only be achieved through constant change, through the wise discarding of old ideas that have outlived their usefulness, and through the adapting of others to current facts."⁴²

We submit, however, that the cases cited by respondents do not govern this case; and that, therefore, we do not need to meet the problem of the impact of the doctrine of *stare decisis* on the question raised herein.

A discussion of the cases will demonstrate, we believe, that they have no pertinence to the instant problem.

Cummings v. Board of Education ~~supra~~, is cited as adopting the "separate but equal" formula in the face of

⁴² Douglas, *Stare Decisis*, 49 Col. L. Rev. 735 (1949).

the fact that the Court specifically states that this problem was not before it.

"It was said at the argument that the vice in the common-school system of Georgia was the requirement that the white and colored children of the state be educated in separate schools. But we need not consider that question in this case. No such issue was made in the pleadings. Indeed, the plaintiffs distinctly state that they have no objection to the tax in question so far as levied for the support of primary, intermediate, and grammar schools, in the management of which the rule as to the separation of the races is enforced. We must dispose of the case as it is presented by the record."⁴³

Berea College v. Kentucky, 211 U. S. 45, involved the constitutionality of a Kentucky statute which made it unlawful for any person or corporation to operate a school or college which received both Negroes and whites as pupils. This Court upheld the constitutionality of the statute but was careful to state that it was not considering the validity of its application to individuals.⁴⁴ Therefore, at most, this decision stands for the proposition that a state may prohibit corporations from accepting students of both races in the same institution without doing violence to the guarantees of the Fourteenth Amendment.⁴⁵ Even this proposition now seems questionable. At any rate, there is little doubt that a state may exercise greater power in its dealings with corporations than it is permitted in its relations with an individual.

⁴³ At pages 543, 544.

⁴⁴ At page 54.

⁴⁵ In granting privileges and advantages which it may withhold, a state may exact conditions which it, under ordinary circumstances, would be unable to do. See: *Hamilton v. Board of Regents*, 203 U. S. 245.

In *Gong Lum v. Rice*, *supra*, a Chinese child was denied admission to a white school in her district. She contended that the state could not group her with Negroes for the purpose of determining what public school she could attend. No question was raised concerning the power of the state to adopt and enforce a racial classification.⁴⁶ The gravamen of plaintiff's contention was that if whites had the authority and the power to protect themselves against contact with Negroes, who were regarded as peculiar and inferior beings, then Chinese should have the same privilege.

"Of course it is the white, or Caucasian race, that makes the laws and construes and enforces them. It thinks that in order to protect itself against the infusion of the blood of other races its children must be kept in schools from which other races are excluded. The classification is made for the exclusive benefit of the law making race. * * *

"If there is danger in the association [with Negroes], it is a danger from which one race is entitled to protection just the same as another. The White race may not legally expose the Yellow race to a danger that the dominant race recognizes and, by the same laws, guards itself against * * *"⁴⁷

"* * * The White race protects itself against conditions that would require social contact [with Negroes]. This, as the Mississippi courts say, to preserve the integrity of the Caucasian race. But has not the Chinese citizen the same right to protection that the Caucasian citizen has? * * * Can we arrogate to ourselves the superior right to so organize the public school system as to protect our racial integrity without regard to the interests or welfare of citizens of other races?"⁴⁸

⁴⁶ Brief of Plaintiff-in-Error filed here at page 14 concedes this authority.

⁴⁷ *Id.* at 9 and 10.

⁴⁸ *Id.* at 13, 14.

"It appears, too, from the discussions in the cases and by the note writers that the courts have taken cognizance of the fact that the [Negro] is not desired as a social equal by he (sic) members of the White race, and, therefore, the White race has made its laws with a view to preventing such social contact, as would have a tendency to foster social relations and social equality. But this same precaution, taken with respect to its own children, is omitted when it comes to dealing with the children of the other races."⁴⁹

This Court felt that the question raised had been settled by *Plessy v. Ferguson*. In that we think it was in error, Mr. Chief Justice TAFT was of the opinion, apparently, that once plaintiff conceded that the state could classify on the basis of race, which petitioner denies in this case, there was no basis for the argument that it could not classify Chinese and Negroes together for the purpose of receiving public educational advantages. At any rate, *Gong Lum v. Rice*, cannot be a precedent for the application of the *Plessy v. Ferguson* formula in the field of education when that question was not before the Court.

In *Missouri ex rel. Gaines v. Canada*, *supra*, the question presented was whether the State of Missouri had denied to petitioner the equal protection of the laws in excluding him, because he was a Negro, from the only law school maintained by the state. That same question was initially presented to the court below in this case. Although the "separate but equal doctrine" was mentioned, the Court only held that it was a denial of equal protection to provide edu-

⁴⁹ Id. at 17.

educational advantages for whites and deny these advantages to Negroes. That decision is no authority for the contention that the application of the "separate but equal" doctrine to a state's educational system complies with the requirements of the Fourteenth Amendment.

In *Sipuel v. Board of Regents, supra*, this Court decided that a state was under an obligation to afford to Negroes whatever educational advantages it offered whites and at the same time. In the argument here, counsel stated that the constitutionality of the state's segregation laws was not an issue in the case. For that reason when an original writ of mandamus was sought in the same case, *sub nom. Fisher v. Hurst*, 333 U. S. 147, on the grounds that the setting up of a segregated school was a denial of equal protection, the Court refused to consider the question.

In none of the cases, therefore, has the "separate but equal doctrine" been in fact applied to determine the reach of the equal protection clause in the relationship of a state to the individual. Moreover, in none of these cases has the doctrine been reexamined. There are no precedents, therefore, to which this Court must give weight which hold that the "separate but equal" doctrine is a valid measure of the individual's entitlement to equal treatment with respect to the educational advantages a state offers. Therefore, we are left only with *Plessy v. Ferguson*, which, as we have pointed out, did not involve educational facilities, as a precedent for the application of the "separate but equal doctrine" in determining the reach of state power under the limitations of the Fourteenth Amendment. And, it is submitted, that case is not applicable to this problem.

III.

If this Court considers *Plessy v. Ferguson* applicable here, that case should now be reexamined and overruled.

We have set out in a preceding section of this brief the reasons for our contention that *Plessy v. Ferguson* is not pertinent to the issues herein raised, and that decision may be reached here without its being considered. However, if the Court should be of the opinion that decision here cannot be reached without disposing of *Plessy v. Ferguson*, then, we submit, *Plessy v. Ferguson* should be reexamined and overruled.

A. In *Plessy v. Ferguson* the Court did not properly construe the intent of the framers of the Fourteenth Amendment.

1. The Court improperly construed the Fourteenth Amendment as incorporating a doctrine antecedent to its passage and a doctrine which the Fourteenth Amendment had repudiated.

In *Plessy v. Ferguson* the Court was required to interpret the recently adopted Fourteenth Amendment. In finding its intent and purpose a method was used which was both unusual and fallacious. A series of state cases, but chiefly *Roberts v. Boston*, 5 Cush. (Mass.) 198, were cited as sources for reading the "separate but equal" formula into the Fourteenth Amendment.⁵⁰ In that case, decided in

⁵⁰ Other state cases cited include *People v. Gallagher*, 93 N. Y. 438; *Ward v. Flood*, 48 Cal. 36; *State v. Garnes v. McCann*, 21 Ohio St. 210; *Leche v. Brumittell*, 103 Mo. 546; *Cory v. Carter*, 48 Ind. 337; *Darson v. Lee*, 7 Ky. 49. It is interesting to note that all these states have now abolished segregation in public schools with the exception of Kentucky. Even there, however, Negroes are attending the graduate and professional schools of the University of Kentucky.

1849, prior to the adoption of the Fourteenth Amendment, a Negro girl contended that Boston authorities could not require her to attend a segregated school.⁵¹ The Supreme Court of Massachusetts held that her exclusion from the regular school did not violate any of her rights under the state constitution, since the city had made provision for her education at a separate school equal to the school maintained for whites. This case is the basic source for the finding in *Plessy v. Ferguson* that the Fourteenth Amendment condoned racial segregation on a "separate but equal" basis.

It should be remembered that when *Roberts v. Boston*, *supra*, was decided, it was believed that Negroes were inferior sub-human beings who could never be equal to whites, and Mr. Chief Justice TANEY in *Scott v. Sandford*, 19 How. 393, wrote that belief into the fundamental law.⁵²

The Thirteenth, Fourteenth and Fifteenth Amendments repudiated the Dred Scott decision. These constitutional provisions were primarily intended to raise the Negro to a status equal to that of whites, to free and protect him from any stigma, degradation or discrimination which his race, color or previous condition of servitude might otherwise invite. *Strauder v. West Virginia*, *supra*. Yet in interpreting one of the constitutional provisions defining this new status, the *Plessy v. Ferguson* Court looked for its intent and meaning in a pre-Fourteenth Amendment philosophy—a philosophy which the new Amendment specifically repudiated.⁵³ Since these were new rights which had

⁵¹ Her attorney was Charles Sumner, later one of the persons chiefly responsible for drafting and steering through Congress the Thirteenth, Fourteenth and Fifteenth Amendments and Civil Rights Legislation passed thereunder.

⁵² Historians credit this decision as one of the causes of the Civil War. See: Frazier, *op. cit. supra* note 37.

⁵³ See Cong. Globe, 42nd Cong., 2d Sess. 3261 (1872); Cong. Globe, 43rd Cong., 1st Sess. 4081, 4082, 4116 (1874).

been created, the intent of the framers of the Thirteenth, Fourteenth and Fifteenth Amendments should have been the primary sources for determining their meaning and purpose. Had this method been followed, modern scholars are of the opinion that the Court would necessarily have concluded that the "separate but equal" doctrine was directly contrary to objectives which the Fourteenth Amendment was meant to accomplish.²¹

2. The framers of the Fourteenth Amendment and of the contemporaneous civil rights statutes expressly rejected the constitutional validity of the "separate but equal" doctrine.

This Court often recognizes the pertinence and value of an analysis of the intent of the framers of constitutional and statutory law in aid of their interpretation and application.²²

Accordingly, it is appropriate in reevaluating the "separate but equal" doctrine as enunciated in *Plessy v. Ferguson* to refer directly to the official statements of the men who were responsible for the drafting of the Fourteenth Amendment and the legislation passed shortly thereafter to implement it.

It became clear shortly after the ratification of the Thirteenth Amendment that it was too limited in scope to

²¹The brief on the merits of the Committee of Law Teachers Against Segregation in Legal Education filed as *amici curiae* in the case of *Sweatt v. Painter*, October Term, 1949, No. 44, does a careful and comprehensive analysis of the question. It is their conclusion that the framers of the Fourteenth Amendment meant to prohibit segregation. *Tassman v. Ten Brock*, *opt. cit. supra* note 12, at 342, *et seq.*, indicate that they have reached the same conclusion. See also: Note, 49 *Col. L. Rev.* 629 (1949) to the same effect. Needless to say we believe that Mr. Justice HARLAN's dissent in *Plessy v. Ferguson* was the correct approach to the question.

²²See, e. g., *United States v. American Trucking Assn.*, 310 U. S. 532, *The Church of the Holy Trinity v. United States*, 143 U. S. 457.

insure that the Negro would be able to achieve the equality and freedom from discrimination which were among its major purposes.⁵⁶ The Congress in 1866 set about combatting the so-called Black Codes enacted by the southern states, which limited the rights of Negroes to own property, institute law suits, testify in any proceedings, and imposed more severe penalties on Negroes than on whites for the same offenses. This legislative effort culminated in the Civil Rights Act of 1866, but in the process of its enactment the Congress became involved in a complicated semantical debate over the meaning of the term "civil rights". The bill itself emerged as a specific corrective only to certain named abuses and failed to resolve the general problems of equality and segregation.⁵⁷

Eventually, it became apparent through the debates on the Civil Rights Act of 1866 that a new constitutional amendment was necessary to eliminate all "discrimination between citizens on account of race or color in civil rights".⁵⁸ To avoid the interpretative refinements of "civil rights" which had plagued the Congress, the more comprehensive "equal protection of the laws" was used as the key phrase for the statement of the basic principle.

Little can be found in the congressional debates relating to the Amendment itself which throws any light on the questions of interpretation here involved. The Amendment passed both houses easily. But the fifth section of the Amendment authorized implementary legislation, and by the time the Amendment was ratified new waves of discriminatory state legislation throughout the South required the 42nd Congress to face the task of shaping new practical statutory remedies. The extended debates of this Congress

⁵⁶ Flack, *The Adoption of the Fourteenth Amendment*, Ch. 1 (1908).

⁵⁷ *Id.*, pages 21, 25, 29.

⁵⁸ Cong. Globe, 39th Cong., 1st Sess., 1290, 1293 (1866).

and of its successor, which finally carried through the passage of the Civil Rights Act of 1875,⁵⁹ are of great value in ascertaining the contemporary views and the "constitutional intent" of the men who drafted the Amendment.⁶⁰ The public statements of these men are particularly persuasive in respect to the "separate but equal" doctrine, for this question was clearly presented, extensively debated, and conclusively resolved in these hearings. If *Plessy v. Ferguson*, *supra*, is the foundation of the theory of civil rights, which holds that a Negro is afforded the equal protection of the laws if he gets merely a technical, segregated "equality", then it is highly relevant here to go behind that decision in order to demonstrate that the men who were responsible for the Fourteenth Amendment and its accompanying legislation expressly rejected the theory and all of its implications.

The bill sponsored by Senator Sumner of Massachusetts was primarily concerned with the prohibition of discrimination in conveyances, inns, theatres and schools. By its language it was explicit that no segregation, no separation of these facilities was to be countenanced. It was pointed out many times that the bill did not permit the establishment of separate facilities even though they might be "equal".

Senator Sumner said:

"Then comes the other excuse, which finds Equality in separation. Separate hotels, separate conveyances, separate theaters, separate schools, separate institutions of learning and science, separate churches, and separate cemeteries—these are the artificial substitutes for Equality; and this is the

⁵⁹ The bill passed the Senate on February 27, 1875, by a vote of 36 to 26, and was approved by the President on March 1st. See Flack, *op. cit. supra* note 56, at 277.

⁶⁰ See Fairman and Morrison, *Does The 14th Amendment Incorporate the Bill of Rights*, 2 Stanford Law Rev. 5 (1949).

contrivance by which a transcendent right, involving a transcendent duty, is evaded * * * Assuming what is most absurd to assume, and what is contradicted by all experience, that a substitute can be an equivalent, it is so in form only and not in reality. Every such attempt is an indignity to the colored race, instance with the spirit of Slavery, and this decides its character. It is Slavery in its last appearance."⁶¹

Senator Pease of Mississippi at a later date, shortly before the bill was passed in the 43rd Congress, states in unequivocal terms:

"The main objection that has been brought forward by the opponents of this bill is the objection growing out of mixed schools. * * * There has been a great revolution in public sentiment in the South during the last three or four years, and I believe that today a majority of the southern people are in favor of supporting, maintaining, and fostering a system of common education. * * * I believe that the people of the South so fully recognize this, that if this measure shall become a law, there is not a state south of the Mason and Dixon's line that will abolish its school system. * * * I say that whenever a state shall legislate that the races shall be separated, and that legislation is based upon color or race, there is a distinction made it is a distinction the intent of which is to foster a commitment of slavery and to degrade him. The colored man understands and appreciates his former condition; and when laws are passed that say that 'because you are a black man you shall have a separate school,' he looks upon that, and justly, as tending to degrade him. There is no equality in that.

" * * * because when this question is settled I want every college and every institution of learning in this broad land to be open to every citizen, that there shall be no discrimination."⁶²

⁶¹ Cong. Globe, 39th Cong., 1st Sess., 382/383 (1865).

⁶² Cong. Globe, 43rd Cong., 1st Session, page 4153 (1874).

In the course of these discussions of the "separate but equal" doctrine its proponents urged upon their colleagues various state court decisions which had followed it, viz., *Roberts v. Boston* and *State, Garnes v. McCann*, *supra*. These cases were expressly rejected as unsound and inconsistent within the meaning and purpose of the equal protection clause.⁶³ Yet these are the decisions which form the principal judicial foundation for this Court's decision in *Plessy v. Ferguson*.

By a vote of 26 to 21 the Senate of the 42nd Congress concluded that "separate but equal" schools, if established under the aegis of the state or by force of state law, were a violation of the Fourteenth Amendment. This judgment, since it came from the men who best knew why the Amendment was drafted and what they intended it to accomplish, should be highly persuasive. It should certainly cast doubt upon the soundness of the *Plessy* decision.

These Senators of 1874 and 1875 are among the most cogent and eloquent advocates of the petitioner's cause in this Court.⁶⁴ In rejecting the "separate but equal" theory,

⁶³ See Cong. Globe, 42nd Cong., 2nd Sess. 3261 (1872); Cong. Globe, 43rd Cong., 1st Sess. 4081, 4082, 4116 (1874).

⁶⁴ This is what the Bill meant to Senator Howe of Wisconsin. Cong. Globe, 43rd Cong., 1st Sess. 4147 (1874):

" * * * the simple justice of the provisions of this bill is self-evident.

"What are they? A command is proposed that no citizen the United States shall be excluded from the accommodations of inns, of public highways, of public schools, nor shall their remains be excluded from resting in public burial grounds notwithstanding they are black. That is all. A national decree is proposed that a citizen shall have the right to travel along the public thoroughfares if he pays his fare, and shall have a right to send his children to the public schools if he meets the charges, although he is not white. That is all. It lays not an ounce of weight upon any man of color but it lifts burdens from some. That is the bill."

Senator Boutwell explained why the concept itself was a contradiction in terms, and a practical impossibility:

“ To say, as is the construction placed upon so much of this bill as I propose to strike out, that equal facilities shall be given in different schools, is to rob your system of public instruction of that quality by which our people without regard to race or color, shall be assimilated in ideas, personal, political, and public, so that when they arrive at the period of manhood they shall act together upon public questions with ideas formed under the same influences and directed to the same general results; and therefore, I say, if it were possible, as in the large cities it is possible, to establish separate schools for black children and for white children, it is in the highest degree inexpedient to tolerate such schools. . . . And inasmuch as we have in this country 4,000,000 colored people, I assume that it is a public duty that they and the white people of the country with whom they are to be associated in public affairs shall be assimilated and made one in the fundamental idea of human equality. Therefore, where it would be possible to establish different schools, I am against it as a matter of public policy.

“ But throughout the larger part of the South it is not possible to establish separate schools for black children and for white children, that will furnish means of education, suited to the wants of either class; and therefore in all that region of the country it is a necessity that the schools shall be mixed in order that they shall be of sufficient size to make them useful in the highest degree; and it is also important that they should be mixed schools, in order that the prejudice which now pervades portions of our people shall be uprooted by the power of general taxation.”

Senator Frelinghuysen searched the underlying principles of our government in replying to his opponents:

"If it be asked what is the objection to classification by race, separate schools for colored children, I reply, that question can best be answered by the person who proposes it asking himself what would be the objection in his mind of his children being excluded from the public schools that he was taxed to support on account of their supposed inferiority of race.

"The objection of such a law on our part is that it would be legislation in violation of the fundamental principles of the nation.

"The objection to the law in its effect on society is that 'a community is seldom more just than its laws;' and it would be perpetuating that lingering prejudice growing out of a race having been slaves which it is as much our duty to remove as it was to abolish slavery.

"Then, too, we know that if we establish separate schools for colored people, those schools will be inferior to those for the whites. The whites are and will be the dominant race and rule society. The value of the principle of equality in government is that thereby the strength inures to the benefit of the weak, the wealth of the rich to the relief of the poor, and the influence of the great to the protection of the lowly. It makes the fabric of society a unit, so that the humbler patrons cannot suffer without the more splendid parts being injured and defeated. This is protection to those who need it. And it is just that it should be so; for of what value is the wealth and talent and influence of the individual if you isolate him from society? Great as he may be, he is the debtor to society. Let him pay.

"Sir, if we did not intend to make the colored race full citizens, if we propose to place them under

the ban of any legalized disability or inferiority, and there to hold them, we should have left them slaves."⁶⁶

One Senator prophesied that under the "pretense of what is called equality" the result would be to "grind out every means of education that the colored man can have".⁶⁷ This same fear was echoed by Mr. Justice HARLAN in his dissenting opinion in *Plessy v. Ferguson*.⁶⁸

The doctrine of separate but equal treatment is in direct conflict with all other decisions of this Court invalidating governmentally imposed distinctions based on race or ancestry. It is contrary to the intent of the Fourteenth Amendment. *Plessy v. Ferguson* furnishes the only support for the doctrine. We believe that a reexamination of this decision will require that it be overruled.

Conclusion.

The District Court stated: "It is the duty of this court to honor the public policy of the State in matters relating to its internal social affairs quite as much as it is our duty to vindicate the supreme law of the land." The right to public graduate education in a public institution on an equal basis with all other applicants is not a matter within the category of "internal social affairs". Appellees' reluctant action in admitting McLaurin to the graduate school, and at the same time subjecting him to the type of segregation which is in many respects more vicious than that in the usual separate schools, places before this Court the question of state notions of equality as against the clear intent of the Fourteenth Amendment.

⁶⁶ Id. at 3452.

⁶⁷ Cong. Rec. 4173, 43rd Cong., 1st Sess. (1874), Mr. Edwards of Vermont.

⁶⁸ *Plessy v. Ferguson*, *supra*, at 552.

Most of those states which have traditions and practices similar to Oklahoma in enforcing racial discrimination refused in 1866 and 1867 to ratify the Fourteenth Amendment, because it was felt, and correctly, that the Amendment would require them to accord to Negroes the same rights accorded to white persons. Their policy, since the adoption of the Fourteenth Amendment, has been to continue the policy of refusing to recognize their Negro citizens as equal to other citizens. By means of discriminatory registration and voting practices, by unequal enforcement of criminal laws, and rigid segregation patterns, these states have continued to thwart the true purposes of the Fourteenth Amendment.

This Court has been prevented from passing upon the question here involved because these states have, in the past, refused to give even a semblance of equality. *Missouri ex rel. Gaines v. Canada*; *Sipuel v. Board of Regents*. Now that the issue is clearly presented, this Court is urged to reaffirm the principle that governmentally enforced racial classifications are unconstitutional.

WHEREFORE, it is respectfully submitted that the judgment of the Court below should be reversed.

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February 25, 1950.

APPENDIX A.

Oklahoma Statutes in Effect at Time of Hearing and Judgment in Lower Court.

70 O. S. 1941, Section 455. It shall be unlawful for any person, corporation or association of persons, to maintain or operate any *college*, school or institution of this state where persons of both white and colored races are received as pupils for instruction, and any person or corporation who shall operate or maintain any such *college*, school or institution in violation hereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, and each day such school, college or institution shall be open and maintained shall be deemed a separate offense. (L. 1913, ch. 219, p. 572, art. 15, Section 5.)

70 O. S. 1941, Section 456. Any instructor who shall teach in any school, college or institution where members of the white race and colored race are received and enrolled as pupils for instruction, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten dollars nor more than fifty dollars for each offense, and each day any instructor shall continue to teach in any such *college*, school or institution, shall be considered a separate offense. (L. 1913, ch. 219, p. 572, art. 15, Section 6.)

70 O. S. 1941, Section 457. It shall be unlawful for any white person to attend any school, college or institution, where colored persons are received as pupils for instruction, and any one so offending shall be fined not less than five dollars, nor more than twenty dollars for each offense, and each day such person so offends, as herein provided, shall be deemed a distinct and separate offense; provided, that nothing in this article shall be construed as to prevent any private school, college or institution of learning from maintaining a separate or distinct branch thereof in a different locality. (L. 1913, ch. 219, p. 572, art. 15, Section 7.)

APPENDIX B.

Statutes Adopted by Oklahoma Legislature After Hearing and Judgment in Court Below.

Section 9. **Repealing Clause.** Chapter 1, and Chapters 3 to 13, inclusive and Chapters 15 to 20, inclusive, and Chapters 22 to 27, inclusive, and Chapters 29 to 31, inclusive, and Sections 21 to 34, inclusive, and Section 36, Section 39, and Sections 661 to 684, inclusive, of Title 70, Oklahoma Statutes 1941, and Chapter 14, of Title 74, Oklahoma Statutes 1941, and Chapters 5 to 26, inclusive, and Chapters 27 to 31, inclusive, and Chapter 45a, of Title 70, Oklahoma Session Laws 1943, and Chapter 10 of Title 68, Oklahoma Session Laws 1944, and Chapter 21 of Title 70, Oklahoma Session Laws 1944, and Chapters 2 to 9, inclusive, and Chapters 27 to 31, inclusive, of Title 70, Oklahoma Session Laws 1945, and Chapters 6 to 19, inclusive, and Chapters 22 to 23a, inclusive, and Chapters 23c to 31f, inclusive, of Title 70, Oklahoma Session Laws 1947, and Sections 3 to 7, inclusive, of Article I, and Articles II and III, of Chapter 21, Title 70, Oklahoma Session Laws 1947, Section 32 of Chapter 10a Title 74 Oklahoma Session Laws of 1947, and all other laws and parts of laws in conflict with the provisions of this Act are hereby repealed. All other laws and statutory provisions that are applicable to public schools, ~~school districts and governing boards thereof,~~ and other matters dealt with in this Act and that are not inconsistent with any of the provisions of this Act, shall continue to be applicable thereto and shall not be held to be repealed by any of the provisions of this Act.

Section 10. **Effective Date of Act.** The provisions of this Act shall not become operative until July 1, 1949.

CHAPTER 15—Separate School For Races.

HOUSE BILL No. 405.

AN ACT relating to the instruction and attendance of the colored race in colleges or institutions of higher education of the State established and or used by the white race; amending 70 O. S. 1941 §§ 455, 456 and 457; repealing all Acts or parts of Acts, in so far as same are in conflict with this Act or the public policy revealed thereby; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

Section 1. **Mixed Schools—Exceptions.** 70 O. S. 1941 § 455 is hereby amended to read as follows:

§ 455. It shall be unlawful for any person, corporation or association of persons to maintain or operate any college, school or institution of this State where persons of both white and colored races are received as pupils for instruction, and any person or corporation who shall operate or maintain any such college, school or institution in violation hereof shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), and each day such school, college or institution shall be open and maintained shall be deemed a separate offense. Provided, that the provisions of this Section shall not apply to programs of instruction leading to a particular degree given at State owned or operated colleges or institutions of higher education of this State established for and/or used by the white race, where such programs of instruction leading to a particular degree are not given at colleges or institutions of higher education of this State established for and/or used by the colored race; provided further, that said programs of instruction leading to a particular degree shall be given at such col-

for the violation of the provisions of any of the three (3) preceding Sections hereof.

Section 5. Repealing Clause. All acts or parts of acts, in so far as same are in conflict with this Act or the public policy revealed thereby, are hereby repealed.

Approved June 9, 1949. Emergency.

leges or institutions of higher education upon a segregated basis. Segregated basis is defined in this Act as classroom instruction given in separate classrooms, or at separate times. The provisions of this Section are subject to Section Four (4) hereof.

Section 2. Teaching in Mixed Schools—Exceptions. 70 O. S. 1941 § 456 is hereby amended to read as follows:

456. Any instructor who shall teach in any school, college or institution where members of the white race and colored race are received and enrolled as pupils for instruction, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than Ten Dollars (\$10.00) nor more than Fifty Dollars (\$50.00) for each offense, and each day any instructor shall continue to teach in any such college, school or institution shall be considered a separate offense. Provided, that the provisions of this Section shall not apply to programs of instruction leading to a particular degree given at State owned or operated colleges or institutions of higher education of this State established for and/or used by the white race, where such programs of instruction leading to a particular degree are not given at colleges or institutions of higher education of this State established for and/or used by the colored race; provided further, that said programs of instruction leading to a particular degree shall be given at such colleges or institutions of higher education upon a segregated basis, as defined in this Act. The provisions of this Section are subject to Section Four (4) hereof.

Section 3. White Persons Attending Colored Schools—Exceptions. 70 O. S. 1941 § 457 is hereby amended to read as follows:

457. It shall be unlawful for any white person to attend any school, college or institution where colored per-

sons are received as pupils for instruction, and any one so offending shall be fined not less than Five Dollars (\$5.00), no more than Twenty Dollars (\$20.00) for each offense, and each day such person so offends; as herein provided, shall be deemed a distinct and separate offense; provided, that nothing in this Article shall be so construed as to prevent any private school, college or institution of learning from maintaining a separate or distinct branch thereof in a different locality. Provided, that the provisions of this Section shall not apply to programs of instruction leading to a particular degree given at State owned or operated colleges or institutions of higher education of this State established for and/or used by the white race, where such programs of instruction leading to a particular degree are not given at colleges or institutions of higher education of this State established for and/or used by the colored race; provided further, that said programs of instruction leading to a particular degree shall be given at such colleges or institutions of higher education upon a segregated basis, as defined in this Act. The provisions of this Section are subject to Section Four (4) hereof.

Section 4. Oklahoma State Regents for Higher Education—Certificate. For the purposes of this Act, a certificate to the President of any college or institution of higher education by the Oklahoma State Regents for Higher Education or by the executive Officers of said Board, certifying that any course or courses given at such college or institution of higher education established for and/or used by the white race are not given at colleges or institutions of higher education of this State established for and/or used by the colored race shall be deemed conclusive proof of such fact in any criminal proceeding in the Courts of Oklahoma against the administrative officers of such college or institution, or against the faculty or against the students thereof.

**IN THE SUPREME COURT OF THE
UNITED STATES**

October Term, 1949

No. 34

G. W. McLAURIN,

Appellant,

VERSUS

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION,
BOARD OF REGENTS OF UNIVERSITY OF
OKLAHOMA *et al.*,

Appellees.

Appeal from the District Court of the United States
for the Western District of Oklahoma

BRIEF OF APPELLEES

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MARCH, 1950.

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Appellees.

**Appeal from the District Court of the United States
for the Western District of Oklahoma**

BRIEF OF APPELLEES

STATEMENT OF THE CASE

The statement of the case that appears on Pages 6 to 10 of appellant's brief is substantially correct. However, for the convenience of the Court, appellees will amplify the same under the following sub-heads:

Findings of Fact and Conclusions of Law of the Trial Court

The above-mentioned findings and conclusions (PR. 39 to 42), including a preliminary statement, were handed down by the three-judge Federal district court (Circuit Judge Murrah and District Judges Vaught and Broadbuss) on October 25, 1948, as follows:

PRELIMINARY STATEMENT

"At a former hearing of this cause, we held the segregation laws of the State of Oklahoma (70 O.S. 1941; Sections 455, 456 and 457) unconstitutional and inoperative *insofar as they deprived the plaintiff of his constitutional right to pursue the course of study he sought at the University of Oklahoma.* We were careful, however, to confine our decree to the particular facts before us, while recognizing the power of the State to pursue its own social policies regarding segregation in conformity with the equal protection of the laws. We expressly refrained from granting injunctive relief, on the assumption that the State statutory impediments to equal educational facilities having been declared inoperative, the State would provide such facilities in obedience to the constitutional mandate.

"Now this cause comes on for further consideration on complaint of the plaintiff, to the effect that although he has been admitted to the University of Oklahoma, and to the course of study he sought, *the segregated conditions under which he was admitted, and is required to pursue his course of study, continue to deprive him of equal educational facilities in conformity with the Fourteenth Amendment.*

FINDINGS OF FACT

I.

"The undisputed evidence is that subsequent to our decree in this case, plaintiff was admitted to the University of Oklahoma, and to the same classes as those pursuing the same courses. *He is required, however,*

to sit at a designated desk in or near a wide opening into the classroom. From this position, he is as near to the instructor as the majority of the other students in the classroom, and he can see and hear the instructor and the other students in the main classroom as well as any other student. His objection to these facilities is that to be thus segregated from the other students so interferes with his powers of concentration as to make study difficult, if not impossible, thereby depriving him of the equal educational facilities. He says in effect that only if he is permitted to choose his seat as any other student, can he have equal educational facilities.

II.

"He is accorded access to and use of the school library as other students, except if he remains in the library to study, he is required to take his books to a designated desk on the mezzanine floor. All other students who use the library may choose any available seat in the reading room in the library, but a majority find it necessary to study elsewhere because of a lack of seating capacity in the library. The plaintiff says that this secluded and segregated arrangement tends to set him apart from other students and hence to deprive him of equal facilities.

III.

"He is admitted to the school cafeteria, where he is served the same food as other students, but at a different time and at a designated table. He does not object to the food, the dining facilities, or the hour served, but to the segregated conditions under which he is served.

"In the language of his counsel, he complains that his required isolation from all other students, solely because of the accident of birth * * * creates a mental discomfiture, which makes concentration and study difficult, if not impossible * * * that the enforcement of these regulations places upon him a badge of inferiority which affects his relationship, both to his fellow students, and to his professors.

CONCLUSIONS OF LAW

I.

It is said that since the segregation laws have been declared inoperative, the University is without authority to require the plaintiff to attend classes under the segregated conditions. *But the authority of the University to impose segregation is of concern to this court only if the exercise of that authority amounts to a deprivation of a Federal right. See Screws v. United States, 325 U.S. 91.*

II.

"The Constitution from which this court derives its jurisdiction *does not authorize us to obliterate social or racial distinctions which the State has traditionally recognized as a basis for classification for purposes of education and other public ministrations.* The Fourteenth Amendment does not abolish distinctions based upon race or color, nor was it intended to enforce social equality between classes and races. *Plessy v. Ferguson, 163 U.S. 537; Cummings v. United States, 175 U.S. 528; Gong Lum v. Rice, 275 U.S. 78; Missouri ex rel. Gaines v. Canada, 305 U.S. 337.* It is only when such distinctions are made the basis for discrimination and unequal treatment before the law that the Fourteenth Amendment intervenes. *Tracy v. Raich, 293 U.S. 33, 42.* It is the duty of this court to honor the public policy of the State in matters relating to its internal social affairs quite as much as it is our duty to vindicate the supreme law of the land.

III.

"The Oklahoma statutes held unenforceable in the previous order of this court *have not been stripped of their vitality to express the public policy of the State in respect to matters of social concern.*" The segregation condemned in *Westminister School District v. Mendez, 161 Fed. (2d) 774,* was found to be wholly inconsistent with the public policy of the State of California, while in our case the segregation based upon racial distinctions is in accord with the deeply rooted social policy of the State of Oklahoma.

IV

The plaintiff is now being afforded *the same educational facilities* as other students at the University of Oklahoma. And, while conceivably the same facilities might be afforded under conditions so odious as to amount to a denial of equal protection of the law, we cannot find any justifiably legal basis for the mental discomfiture which the plaintiff says deprives him of *equal educational facilities* here. We conclude therefore that the classification, based upon racial distinctions, as recognized and enforced by the regulations of the University of Oklahoma, rests upon a reasonable basis, *having its foundation in the public policy of the State*; and does not therefore operate to deprive this plaintiff of the equal protection of the laws. The relief he now seeks is accordingly denied.

It was from the above findings and conclusions, and the November 22, 1948 journal entry of judgment (R. 43 and 44) based thereon, that this appeal was taken.

Applicable Statutes

At the time the above findings, conclusions and journal entry of judgment were handed down by the trial court, the applicable Oklahoma statutes were set forth as 70 O.S. 1941, §§ 455, 456 and 457, an abstract thereof (see Page of appellant's brief) being as follows:

70 O.S. 1941, § 455, makes it a misdemeanor, punishable by a fine of not less than \$100 nor more than \$500,

* * * any person, corporation or association of persons to maintain or operate any college, school or institution of this State where persons of both white and colored races are received as pupils for instruction.

and provides that each day same is so maintained or operated "shall be deemed a separate offense."

70 O.S. 1941, § 456, makes it a misdemeanor, punishable by a fine of not less than \$10 nor more than \$50, for any instructor to teach

"* * * in any school, college or institution where members of the white race and colored race are received and enrolled as pupils for instruction."

and provides that each day such an instructor shall continue to so teach "shall be considered a separate offense."

70 O.S. 1941, § 457, makes it a misdemeanor, punishable by a fine of not less than \$5 nor more than \$20, for

"* * * any white person to attend any school, college or institution, where colored persons are received as pupils for instruction."

and provides that each day such a person so attends "shall be deemed a distinct and separate offense."

After the rendition of said findings, conclusions and journal entry, the Oklahoma legislature, at its 1949 regular session, enacted House Bill No. 409, effective June 9, 1949, same being Chapter 15, Title 70, Page 608, Oklahoma Session Laws 1949 (quoted in full on Pages 57 to 60 of appellant's brief), amending Sections 455, 456 and 457, *supra*, by adding to each thereof (see Page 4 of appellant's brief) the following *proviso*:

"*Provided*, that the provisions of this Section shall not apply to programs of instruction leading to a particular degree given at *State owned or operated colleges or institutions of higher education of this State* established for and/or used by the white race, where such programs of instruction leading to a particular degree are not given at colleges or institutions of higher edu-

cation of this State established for and or used by the colored race: provided further, that said programs of instruction leading to a particular degree *shall be given at such colleges or institutions of higher education upon a segregated basis*. Segregated basis is defined in this Act as classroom instruction given in separate classrooms, or at separate times. * * *

However, the said 1949 legislature did not make appropriations to the Oklahoma State Regents for Higher Education sufficient, in the opinion of said State Regents, to enable them to allocate funds to the University of Oklahoma to provide separate classroom instruction as defined in the last sentence of the above quoted proviso, and hence no such allocation has been made.

Segregation As Now Practiced

Appellant, on Pages 9 and 10 of his brief, properly called the Court's attention to the fact that segregation, as now practiced at the University of Oklahoma, is materially different than at the time the instant case was tried and decided. This change was made necessary by reason of the amendatory provisos above mentioned, and the failure of the State Regents to allocate funds, as aforesaid, to finance the *separate classroom* provisions of said provisos.

In this connection we quote from appellant's brief (Pages 9 and 10, *supra*), as follows:

"Subsequent to the hearing and judgment in the lower court, appellant, McLaurin, was permitted to go into the regular classroom and to sit in a section surrounded by a rail on which there was a large sign stating 'Reserved for Colored.' At the beginning of the last semester, February, 1950, the rail and sign

were removed. Appellant is now permitted to eat in the students' cafeteria but is required to sit at a segregated table. He is permitted to use the main library but only on a segregated basis.

Appellees, however, deem it proper to amplify the above quoted statement so as to fully inform the Court in relation to said changed segregation practices. We assume that such information will be of assistance to the Court in reaching its decision not only as to the merits of this appeal but as to what type of an order should be entered therein.

In this connection appellees desire to state that after the adjournment of the regular session of the 1949 legislature and prior to the next regular school term beginning in September, 1949, pursuant to and under authority of a resolution of the Board of Regents of the University of Oklahoma, the proper administrative authorities of said University, in an attempt to carry out not only the terms of said resolution but the segregation public policy of the State as evidenced by Sections 455, 456, 457, *supra*, as amended, *that is*, insofar as available funds permitted, adopted certain administrative policies which they believed would provide separate but equal educational facilities and advantages for both the white and the colored students (including appellant) attending the University during the September, 1949, and subsequent school terms.

Insofar as the matters complained of by appellant are concerned, said policies are as follows:

1. Appellant and other of the 23 colored students now receiving resident instruction at the University of

Oklahoma, are assigned regular seats in a designated row of each classroom in which they receive instruction, the other seats being assigned to white students. The seats so assigned are equal or substantially equal, and there are no railings or other division lines to indicate which seats are assigned to white and/or colored students.

2. Appellant, and said other colored students, have full access to the University library, and may check out books the same as white students. They have assigned for their use a designated table or tables on the main floor of the library, the other tables on said floor being assigned for the use of white students.

3. Appellant, and said other colored students, are permitted to take their meals at both of the University operated campus cafeterias at the same times as white students. They go through the regular cafeteria line, along and with the white students, and are assigned a special table or tables in the regular cafeteria dining room, the other tables in said room being assigned to white students.

Other Segregations Laws of Oklahoma

Section 3, Article 13, of the Constitution of Oklahoma, is as follows:

"Separate schools for white and colored children with like accommodation shall be provided by the Legislature and impartially maintained. The term 'colored children,' as used in this section, shall be construed to mean children of African descent. The term 'white children' shall include all other children."

This provision, in appellees' opinion (although some entertain a *contra* view) is applicable only to the public or common schools of Oklahoma, and not to a State supported institution of higher education, such as is involved here. In this connection it will be noted that the provisos

in the 1949 amendments (see sub-head hereof entitled "Applicable Statutes") to 70 O.S. 1941, §§ 455, 456 and 457, *relate only* to institutions of higher education, hence the primary inhibitions of said sections *still apply to the public or common schools of Oklahoma.*

ARGUMENT AND AUTHORITIES

The argument of appellant is set forth on Pages 15 to 54 of his brief. In said argument it is in effect contended that the policy of segregation of white and colored students at the University of Oklahoma which was in force *at the time this case was tried and decided* in October and November, 1948, as well as the policy of segregation of such students *which has been in force* at the University of Oklahoma since the beginning of the September, 1949 school term, is violative of the Fourteenth Amendment of the Constitution of the United States, the material part of which is as follows:

• "No state shall make or enforce any law which shall
* * * deny to any person within its jurisdiction the
equal protection of the laws."

In ~~this~~ connection appellant, at Page 36 of his brief, quotes the second paragraph of the conclusions of law of the trial court (Page 4 hereof), and thereafter in effect asserts that the cases cited and relied upon in said paragraph, especially the basic or leading case of *Plessy v. Ferguson* (1895), 163 U.S. 537, do not support the conclusions of law set forth in said paragraph, and that if they do (which appellant denies), said cases, *especially the case of Plessy v. Ferguson,*

*** should be re-examined and overruled.

In fact, on Page 43 of his brief, appellant contends:

*"There are no precedents * * * to which this Court must give weight which hold that the 'separate but equal' doctrine is a valid measure of the individual's entitlement to equal treatment with respect to the educational advantages a state offers. Therefore, we are left only with Plessy v. Ferguson, which, as we have pointed out, did not involve educational facilities, as a precedent for the application of the 'separate but equal doctrine' in determining the reach of state power under the limitations of the Fourteenth Amendment."*

This contention, in appellees' opinion, raises the essential issue involved in this appeal, and hence we will confine our argument, not to the wisdom or lack of wisdom of past or present laws of Oklahoma requiring separate but equal educational facilities for the white and colored races (same being solely a legislative matter), but to pertinent decisions of this Court passing on the constitutional validity of such laws under the Fourteenth Amendment.

In doing so, it should be kept in mind that if appellant is correct in contending that state laws requiring separate but equal educational facilities for members of the white and colored races are so clearly violative of the Fourteenth Amendment as to require this Court, after due consideration of "presumptions of constitutionality" and contemporaneous and continuous administrative interpretation and practice, to hold such laws unconstitutional, necessarily follows that:

1. The modified separate but equal educational facilities as to "graduate" instruction furnished to members of both the white and colored races at the Uni-

versity of Oklahoma both prior to and after 70 O.S. 1941. §§ 455, 456 and 457 were amended in 1949.

2. The separate but equal educational facilities as to college (not graduate) instruction furnished to members of the colored race at Langston University both prior to and after Sections 455, 456 and 457 were amended in 1949, and

3. The separate but equal educational facilities furnished members of the colored race attending the public or common schools of Oklahoma,

are being furnished in violation of the Fourteenth Amendment and hence must be discontinued. Such a holding would necessarily result:

(a) In the *abandoning* of many of the state's existing educational establishments,

(b) In the *crowding* of other such establishments, and

(c) In *preventing* practically all of the approximately 1600 Negro school teachers now employed in separate schools and colleges of Oklahoma from hereafter securing employment in schools and colleges of the state.

In connection with Paragraph (c), *supra*, it will be noted that since the population of Oklahoma is more than 90% white, such fact will probably mean that white members of school boards will be appointed in and for the several school districts and colleges of the state who will employ white (not colored) instructors to teach classes that are predominately white.

While appellees concede that the case of *Plessy v. Ferguson*, which appellant asserts, as aforesaid,

*** should be re-examined and overruled."

involved the construction of a Louisiana law requiring railway companies carrying passengers in their coaches to provide "equal, but separate accommodations for the white and colored races," it will be noted by an examination of the opinion in said case that this Court relied, at least in part, upon principles of law theretofore announced by it and the appellate courts of many of the states, holding that state laws, as well laws of the District of Columbia, requiring separate but equal educational facilities for members of the white and colored races, were not violative of the Fourteenth Amendment, and that this Court laid down principles of law in said cases which clearly support the constitutional validity of such laws.

In this connection, appellees quote from *Plessy v. Ferguson*, *supra*, as follows:

[Page 544] "The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of States, where the political rights of the colored race have been long and most earnestly enforced.

[Page 545] "Similar laws have been enacted by Congress under its general power of legislation over the District of Columbia, Rev. Stat. D.C. §§ 281, 282, 283, 310, 319, as well as by the legislatures of many of the States, and have been generally, if not uniformly, sustained by the courts.

(Citing Cases)

"Laws forbidding the intermarriage of the two races may be said in a technical sense to interfere with the freedom of contract, and yet have been universally recognized as within the police power of the State.
* * *

In connection with the last above quoted paragraph of this Court's opinion in the *Plessy* case, appellees desire to state that 43 O.S. 1941, §§ 12 and 13, prohibit the intermarriage of the two races in Oklahoma, and that said sections were upheld by the Circuit Court of Appeals of the Tenth Circuit in the case of *Stevens v. United States* (1944), 146 Fed. (2d) 120, the 8th paragraph of the syllabus of said case being as follows:

"8. The Oklahoma statute forbidding marriage of any person of African descent to any person not of such descent is not violative of Fourteenth Amendment. 43 O.S. 1941, § 12; U.S.C.A. Const. Amend. 14."

This Court, in the said case of *Plessy v. Ferguson*, *supra*, also laid down the following principles of law, which appellees believe support their position here:

[Page 545] "The distinction between laws interfering with the political equality of the Negro and those requiring the separation of the two races in schools, theatres and railway carriages has been frequently drawn by this court. * * *

[Page 55] "So far, then, as a conflict with the Fourteenth Amendment is concerned, the case reduces

itself to the question whether the statute of Louisiana is a reasonable regulation, and with respect to this, *there must necessarily be a large discretion on the part of the legislature.* In determining the question of reasonableness it is at liberty to act with reference to the *established usages, customs and traditions of the people,* and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable, or more obnoxious to the Fourteenth Amendment than the Acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures.

*"We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the Act, but solely because the colored race chooses to put that construction upon it. The argument necessarily assumes that if, as has been more than once the case, and is not unlikely to be so again, the colored race should become the dominant power in the state legislature, and should enact a law in precisely similar terms, it would thereby relegate the white race to an inferior position. We imagine that the white race, at least, would not acquiesce in this assumption. The argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the Negro except by an enforced commingling of the two races. We cannot accept this proposition. * * **

In connection with the last quoted paragraph of the *essy case, supra*, attention is called to Page 12 of appellee's brief, wherein he asserts that to admit him to the University of Oklahoma and then to require him "to sit

outside a regular classroom" (since September, 1949, he sits in a designated row of the regular classroom).

"* * * could be for no purpose other than to humiliate and degrade him—to place a badge of inferiority upon him."

Appellees do not believe that the "purpose" of the University authorities in adopting the administrative policy attacked here, was to "humiliate and degrade" appellant or to place a "badge of inferiority" upon him, but was an honest attempt by said authorities to comply with the public policy of Oklahoma, as heretofore reviewed, and at the same time not violate the Fourteenth Amendment.

Appellees do not deem it necessary to discuss here the case of *Cummings v. United States* (1899), 175 U.S. 528, or the case of *Gong Lum v. Rice* (1927), 275 U.S. 78, cited by the trial court in support of the conclusions reached thereby in Paragraph II of its conclusions of law (quoted on Page 4 thereof), and attacked as not being in point on Pages 39 and 41 of appellant's brief, other than to quote the following pertinent language of Chief Justice Taft in said latter case (*Gong Lum v. Rice, supra*), as follows:

[Page 85] "The question here is whether a Chinese citizen of the United States is denied equal protection of the laws when he is classed among the colored races and furnished facilities for education equal to that offered to all, whether white, brown, yellow, or black. Were this a new question, it would call for very full argument and consideration, but we think that it is the same question which has been many times decided to be within the constitutional power of the state legislature to settle without intervention of the Federal courts under the Federal Constitution."

(Citing cases)

In *Plessy v. Ferguson*, 163 U.S. 537, 544, 545, 41 L. ed. 256, 258, 16 Sup. Ct. Rep. 1138, in upholding the validity under the 14th Amendment of a statute of Louisiana requiring the separation of the white and colored races in railway coaches, *a more difficult question than this*, this court, speaking of permitted race separation, said:

The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been longest and most earnestly enforced.

The fourth and last case cited by the trial court in support of the conclusions reached thereby in Paragraph II of its conclusions of law, and attacked as not being in point on Pages 42 and 43 of appellant's brief, is the case of *Missouri ex rel. Gaines v. Canada* (1938), 305 U.S. 91, 7. That the principles of law announced by Chief Justice Hughes in said case are in point here is clearly shown by the following excerpts thereof, to-wit:

[Page 344] "In answering petitioner's contention that this discrimination constituted a denial of his constitutional right, the state court has fully recognized the obligation of the State to provide Negroes with advantages for higher education substantially equal to the advantages afforded to white students. The State has sought to fulfill that obligation by furnishing equal facilities in separate schools, a method the validity of which has been sustained by our decisions. *Plessy v. Ferguson*, 163 U.S. 537, 544, 41 L. ed. 256, 258, 16 S. Ct. 1138; *McCabe v. Atchison, T. & S. F. Ry. Co.*, 235 U.S. 151, 160, 59 L. ed. 169, 173, 35 S. Ct. 69; *Gong Lum v. Rice*, 275 U.S. 78, 85, 86, 22 L. ed. 172, 176, 177, 48 S. Ct. 91. Compare *Commig v. Richmond County Bd. of Edu.*, 175 U.S.

528, 544, 545, 44 L. ed. 262, 266, 20 S. Ct. 197.

* * *
[Page 349] "The admissibility of laws separating the races in the enjoyment of privileges afforded by the State rests wholly upon the quality of the privileges which the laws give to the separated groups within the State." * * *

On Page 43 of appellant's brief it is in effect contended that neither the case of *Sipuel v. Board of Regents of the University of Oklahoma et al.* (Jan. 12, 1949), 332 U.S. 631, nor the subsequent case of *Fisher v. Hurst et al.* (Feb. 16, 1949), 333 U.S. 147, uphold or pass upon the constitutionality of state laws providing for separate but equal educational facilities for members of the white and colored races.

While it is true, as stated by this Court in the *Fisher* case (Page 150), that the petition for certiorari in the *Sipuel* case,

"* * * did not present the issue whether a state might not satisfy the equal protection clause of the Fourteenth Amendment by establishing a separate law school for Negroes,"

since at that time the State of Oklahoma had not attempted to establish such a school but was asserting it had a reasonable time in which to do so, said issue was presented in the subsequent *Fisher* case and, as we see it, in effect answered in the affirmative, although the question as to whether or not a separate Negro law school, such as was referred to in the district court's order complained of in said case, would be timely established, and if established would be substantially equal to the law school of the University of Oklahoma, was, of necessity, not passed on in said case.

Inasmuch as the Court's decision in the *Fisher* case quotes the material portion of the Court's decision in the *Sipuel* case, and also quotes the order of the District Court of Cleveland County complained of by appellant in the *Fisher* case, appellees are quoting herein the pertinent language of said latter decision, as follows:

[Page 147] "Petitioner moves for leave to file a petition for a writ of mandamus to compel compliance with our mandate issued in *Sipuel v. University of Oklahoma*, January 12, 1948 (332 U.S. 631, ante, 247; 68 S. Ct. 299). We there said:

"The petitioner is entitled to secure legal education afforded by a state institution. To this time, it has been denied her although during the same period many white applicants have been afforded legal education by the State. The State must provide it for her in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group. *Missouri ex rel. Gaines v. Canada* 1938), 305 U.S. 337, 83 L. ed. 208, 59 S. Ct. 232."

* * * * *

[Page 149] "It is further stated by petitioner that the District Court of Cleveland County of Oklahoma entered an order on January 22, 1948, as follows:

"It is, therefore, ordered, adjudged and decreed by this court that unless and until the separate school of law for Negroes, which the Supreme Court of Oklahoma in effect directed the Oklahoma State Regents for Higher Education to establish

"with advantages for education substantially equal to the advantages afforded to white students."

is established and ready to function at the designated time applicants of any other group may

hereafter apply for admission to the first-year class of the School of Law of the University of Oklahoma, and if the plaintiff herein makes timely and proper application to enroll in said class, the defendants, Board of Regents of the University of Oklahoma *et al.*, be and the same are hereby ordered and directed to either:

(1) enroll plaintiff, if she is otherwise qualified, in the first-year class of the School of Law of the University of Oklahoma, in which school she will be entitled to remain on the same scholastic basis as other students thereof *until* such a separate law school for Negroes is established and ready to function, or

(2) not enroll any applicant of any group in said class *until* said separate school is established and ready to function.

It is further ordered, adjudged and decreed that *if such a separate law school is so established and ready to function*, the defendants, Board of Regents of the University of Oklahoma *et al.*, be and the same are hereby ordered and directed to *not enroll plaintiff* in the first-year class of the School of Law of the University of Oklahoma. * * *

"The only question before us on this petition for a writ of mandamus is whether or not our mandate has been followed. *It is clear that the District Court of Cleveland County did not depart from our mandate.*" * * *

[Page 151]. "Motion for leave to file petition for writ of mandamus is denied."

CONCLUSION

The above decisions of this Court, coupled with the fact that all of the decisions of the state courts we have been able to find support the constitutional validity of state laws providing for separate but equal educational fa-

cilities for the white and colored races, lead appellees to the conclusion that said decisions should be followed (not overruled) in the instant case, and that, accordingly, the decision of the three-judge Federal district court appealed from here should be affirmed.

Respectfully submitted,

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MARCH, 1950.

DEC 8 1949

CHARLES ELMORE CROSBY

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

34 44

Nos. 614 and 667

G. W. McLAURIN,

Appellant,

vs.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION,
BOARD OF REGENTS OF UNIVERSITY OF OKLAHOMA, et al.,

Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF OKLAHOMA.

HEMAN MARION SWEATT,

Appellant,

vs.

THEOPHILIS SHICKEL PAINTER, et al.,

Appellee.

APPEAL PURSUANT TO WRIT OF CERTIORARI GRANTED TO
THE SUPREME COURT OF THE STATE OF TEXAS.

**MOTION AND BRIEF FOR THE AMERICAN FEDERATION
OF TEACHERS AS AMICUS CURIAE.**

PAUL G. ANNES,

*Counsel for the
American Federation of Teachers.*

A. MARK LEVIEN,
JOHN LIGTENBERG,

Of Counsel.

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| | |
|---|----|
| Brown, Earl, and George R. Leighton, "The Negro and the War"—Public Affairs Pamphlet No. 71—1942, pp. 14-15 | 16 |
| Deutscher, Max, and Isidor Chain, The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion, Journal of Psychology, 1948-26, pp. 259-287 | 15 |
| Encyclopedia Britannica, Vol. 21—Texas, p. 98, 1942.. | 7 |
| Hartmann, George W., Educational Psychology, Fore- word, p. VI, American Book Co., 1940..... | 13 |
| Hearings before the Committee on Labor, House of Representatives on H R 3986, H R 4004 and H R 4005. Vol. 1, U. S. Govt. Printing Office, 1944, p. 127 | 17 |
| Journal of Negro Education, Summer 1947..... | 11 |
| Judd, Charles H., Educational Psychology, p. 3, Hough- ton Mifflin, 1939 | 13 |

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| Lewin, Kurt, "Resolving Social Conflicts," pp. 174 and 214, Harper & Bros., 1948..... | 14 |
| National Survey of the Higher Education of Negroes, Vol. 1 | 11 |
| Negro Year Book, Tuskegee Institute, 1947. "The Negro and Education," p. 56. W. Harden Hughes..... | 10 |
| Public School Expenditures, Dr. John Norton and Dr. Eugene S. Lawler, American Council on Education, 1944 | 10, 11 |
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| At page 279 | 15 |
| The Black & White of Rejections for Military Service, American Teachers Assn. Studies, ATA Montgomery, Ala., 1944 | 11 |
| The Legal Status of the Negro (p. 134), Charles S. Mangum, Jr., Chapel Hill University of N. C. Press, 1940 | 11 |
| "To Secure These Rights"—U. S. Gov't Printing Office, 1917, p. 166..... | 8 |
| Vocational Education and Guidance of Negroes, Bulletin No. 38, 1937, U. S. Dept. of Interior, Office of Education, p. 13 | 11 |

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1936

Nos. 614 and 667

G. W. McLAURIN,

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vs.

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Appellee.

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vs.

THEOPHILIS SHICKEL PAINTER, et al.,

Appellee.

APPEAL PURSUANT TO WRIT OF CERTIORARI GRANTED TO
THE SUPREME COURT OF THE STATE OF TEXAS.

**MOTION FOR LEAVE TO FILE BRIEF
AS AMICUS CURIAE.**

*To the Honorable; the Chief Justice and the Associate
Justices of the Supreme Court of the United States.*

The undersigned, as counsel for and on behalf of the
American Federation of Teachers, respectfully move this
Honorable Court for leave to file the accompanying brief
as *Amicus Curiae*.

The American Federation of Teachers is an organization of more than 800 locals of 60,000 teachers throughout the country, committed to a policy of "Democracy in Education: Education for Democracy."

The Federation believes that education is democracy's first line of defense. It is, for this reason, vitally interested in the issues of the Sweatt and McLaurin cases—issues which will determine how much more effective education can be in strengthening the democratic way of life.

The institutions of a democratic government are under duty to protect such a government from both external and internal dangers. The Federation maintains that segregation in public schools is discriminatory and as such is an internal danger to our democracy, which the Supreme Court should enjoin as violative of our Constitution.

The question presented by these two cases is whether the segregation of Negroes in the public educational institutions as practiced in Texas and Oklahoma violates the Fourteenth Amendment. We believe it does.

It is to present written argument on this issue, so fundamental to our democracy, that movants seek leave to file a brief *amicus curiae*.

Consent of counsel for petitioners has been given to the filing of this brief. Consent of counsel for respondents in the *McLaurin* case has been given. Consent of counsel for respondents in the *Sweatt* case, though requested, has been refused.



PAUL G. ANNES,

*Counsel for American Federation
of Teachers.*

A. MARK LEVIEN,
JOHN LIGTENBERG,

Of Counsel.

IN THE
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OCTOBER TERM, A. D. 1949.

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 THE SUPREME COURT OF THE STATE OF TEXAS.

**BRIEF OF THE AMERICAN FEDERATION
 OF TEACHERS AS AMICUS CURIAE.**

The American Federation of Teachers submits this brief as *amicus curiae* in view of the great importance to democracy and the cause of education of the constitutional issue involved in these cases.

**Opinions Below.
Statutes Involved.**

The opinions below and the statutes involved are set out in the briefs of the appellants in the two cases.

Question Presented.

The general question presented by both these appeals is whether the States of Texas and Oklahoma are violating the mandates of the Fourteenth Amendment by their practices of segregating Negroes in their public educational institutions.

Statement.

In the *McLaurin* case, McLaurin, seeking admission to classes at the University of Oklahoma leading to a doctor's degree in education, after first being refused, was admitted on a segregated basis. At classes he was placed in a different room and "attended" class through an open door. He was excluded from the regular classroom, the regular library rooms and the main part of the cafeteria.

In the *Sweatt* case, the validity of Texas constitutional and statutory provisions requiring the separation of the races in professional schools is attacked. Likewise questioned is whether, under the Fourteenth Amendment, Texas may refuse a Negro admission to the regular law school of the University of Texas and send him to a separate Negro law school specially established for him—the lone student.

Summary of Argument.

The American Federation of Teachers whose motto is: "Democracy in Education: Education for Democracy" will concern itself in this *amicus curiae* brief chiefly with the effect on education of segregation, to show that segregation in public educational institutions violates the equal protection clause of the Fourteenth Amendment.

The American Federation of Teachers maintains that segregation violates basic principles of the education process; that Negroes attending segregated schools, or segregated from their fellow students in regular schools, are being denied the equal protection of the laws, mandated by the Fourteenth Amendment.

ARGUMENT.

I.

Segregation of students in the Public Educational Institutions of Oklahoma and Texas, as shown by the records in these cases, violates the requirements of the equal protection clause of the Fourteenth Amendment.

The Fourteenth Amendment to the Constitution, in Section 1, provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The chief object of the first sentence of Section 1 of the Amendment, which became a part of the Constitution shortly after the close of the Civil War, was to guarantee the Negro the status of a citizen; Cf. *Elk v. Wilkins*, 112 U. S. 94, 101 (1884). The chief purpose of the adoption of the Fourteenth Amendment was the desire to extend federal protection to the recently emancipated race from unfriendly and discriminatory legislation by the states—Cf. *Buchanan v. Warley*, 245 U. S. 60, 76 (1916); *The Slaughter House Cases*, 16 Wall. 36 (1872).

The Fourteenth Amendment made Negroes citizens of the United States and was intended further to protect them fully in the exercise of their rights and privileges. To

make sure that this intent was fully known, Congress refused to readmit Southern States or seat their representatives until the states accepted the Fourteenth Amendment. Texas was one of these states and on March 30, 1870, after its acceptance of the Fourteenth and Fifteenth Amendments, its representatives were admitted to Congress. Cf. *Encyclopedia Britannica*, Vol. 21—Texas, p. 98, 1942.

Discussing the purpose of the Fourteenth Amendment, this Court, in *Strauder v. West Virginia*, 100 U. S. 303, 307 (1879), said:

“It (the Amendment) ordains that no state shall deprive any person of life, liberty, or property; without due process of law, or deny to any person within its jurisdiction the equal protection of the laws. What is this but declaring that the law in the states shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the states, and in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color!”

This, however, did not stop the practice of segregation in the Southern States, and when that issue was presented to this Court in 1896, in *Plessy v. Ferguson*, 163 U. S. 537, 550 (1896), involving a Louisiana statute which required separation of Negro and white passengers, this Court said:

“... We cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable, or more obnoxious to the Fourteenth Amendment than the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures.”

In *Missouri ex rel. Gaines v. Canada*, registrar, 305 U. S. 337, 344, this Court said:

"In answering petitioner's contention . . . the state court has fully recognized the obligation of the State to provide Negroes with advantages for higher education substantially equal to the advantages afforded to white students. The State has sought to fulfill that obligation by furnishing equal facilities in separate schools, a method the validity of which has been sustained by our decisions."

And at page 349 this Court said:

"The admissibility of laws separating the races in the enjoyment of privileges afforded by the State rests wholly upon the equality of the privileges which the laws give to the separated groups within the State."

Recently, the doctrine of "separate but equal" facilities expressed in the above quoted *Plessy* and *Gaines* cases was found to be a menace to American democracy and indefensible by the President's Committee on Civil Rights which unequivocally advocated that it be eliminated. In its report, the Committee said:

"The separate but equal doctrine has failed in three important respects. First, it is inconsistent with the fundamental equalitarianism of the American way of life in that it marks groups with the brand of inferior status. Secondly, where it has been followed, the results have been separate and unequal facilities for minority peoples. Finally, it has kept people apart despite incontrovertible evidence that an environment favorable to civil rights is fostered whenever groups are permitted to live and work together. There is no adequate defense of segregation."

Furthermore, recent decisions of this Court enunciate principles in conflict with the rationale of the *Plessy* and *Gaines* cases. These include: *Takahashi v. Fish & Game Commission*, 332 U. S. 410; *Oyama v. California*, 332 U. S. 633, 640, 646 (1948); *Sipuel v. Board of Regents of the*

University of Oklahoma, 332 U. S. 631 (1948); *Shelley v. Kraemer*, 334 U. S. 1 (1948).

In *Sipuel v. Board of Regents of the University of Oklahoma*, 332 U. S. 631 (1948), this Court said that a Negro was entitled to receive legal education afforded by a state institution; that the state must "provide it for her in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group."

In the *Shelley* case, this Court, in considering private agreements to exclude persons of designated race or color from the use or occupancy of real estate for residential purposes and holding that it was violative of the equal protection clause of the Fourteenth Amendment for state courts to enforce them said (at p. 22):

"... The rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual. The rights established are personal rights. It is therefore no answer to these petitioners to say that the courts may also be induced to deny white persons rights of ownership and occupancy on grounds of race or color. Equal protection of the laws is not achieved through indiscriminate imposition of inequalities."

At p. 23:

"The historical context in which the Fourteenth Amendment became a part of the Constitution should not be forgotten. Whatever else the framers sought to achieve, it is clear that the matter of primary concern was the establishment of equality in the enjoyment of basic civil and political rights and the preservation of those rights from discriminatory action on the part of the States based on considerations of race or color."

These principles cast doubt on the soundness of the rule laid down in the *Plessy* and *Gaines* cases. We submit that it should no longer be followed.

To paraphrase the decision in the *Shelley* case, it seems to us that the segregation of students in public educational institutions as practiced by Texas and Oklahoma as shown by the records, violates the primary object of the Fourteenth Amendment: "... the establishment of equality in the enjoyment of basic civil and political rights and the preservation of those rights from discriminatory action on the part of the States based on considerations of race or color."

II.

Segregation in public institutions of learning inevitably results in inferior educational opportunities for the Negro.

Commenting on the study of Dr. John Norton and Dr. Eugene Lawler—Public School Expenditures (1944) W. Harden Hughes states:

"The contrasts in support of white and Negro schools are appalling . . . the median expenditure per standard classroom unit in schools for white children is \$1,160 as compared with \$476 for Negro children. Only 2.56% of class rooms in the white schools fall below the \$500 cost level while 52.59% of the class rooms for Negro children are below this level."¹

"The state supported institutions of higher learning for Negroes are far inferior" states Charles S. Mangum, Jr., "to their sister institutions for whites. Most of the inequalities which have been noted herein with respect to the public schools for whites and Negroes are also present in the Negro normal and technical schools. . . . There is hardly one among them

¹ Negro Year Book, Tuskegee Institute 1947. "The Negro and Education." W. Harden Hughes, p. 56.

that could compare with any good white college in the same area."²

Statistics on vocational education in the land grant schools and colleges among Negroes show:

"that of the federal funds allotted for vocational training in 1934-35 white schools received 88.2% and Negro schools 11.8%."³

A recommendation of this report (1934-35) was:

"that individuals and groups interested in the improvement of educational facilities continue and increase their efforts to promote equitability of educational opportunity and equitability in the distribution of funds without regard to race or color."³

In Texas, the expenditure for public schools is \$1400 for whites per classroom unit and \$700 for Negroes.⁴ There is a corresponding discrimination in school transportation, salaries of teachers, library service and provision for training beyond the secondary school.

Several recent studies⁵, as well as many previous ones, all indicate the great disparity between the educational opportunities afforded white youth and those offered to Negro youth in the states where a segregated and discriminatory system of education prevails.

So obvious are the inequalities that in Vol. 1 of the National Survey of the Higher Education of Negroes we find this statement: "No one with a knowledge of the facts

² The Legal Status of the Negro (p. 134), Charles S. Mangum, Jr., Chapel Hill University of N. C. Press, 1940.

³ Vocational Education and Guidance of Negroes, Bulletin No. 38, 1937, U. S. Dept. of Interior, Office of Education, p. 13.

⁴ Public School Expenditures, Dr. John Norton and Dr. Eugene S. Lawler, American Council on Education, 1944.

⁵ The Black & White of Rejections for Military Service, American Teachers Assn. Studies, ATA Montgomery, Ala., 1944; Public School Expenditures in the U. S., Dr. John K. Norton and Dr. Eugene S. Lawler; American Council on Education, Wash., D. C., 1944; Journal of Negro Education, Summer 1947.

believes that Negroes enjoy all the privileges which American democracy expressly provides for the citizens of the U. S. and even for those aliens of the white race who reside among us. The question goes much deeper than the Negro citizens' *legal right to equal educational opportunity*. The question is whether American democracy and what we like to call the American way of life, can stand the strain of perpetuating an undemocratic situation; and whether the nation can bear the *social cost of utilizing only a fraction of the potential contribution of so large a portion of the American population*.⁶

The Constitution is a living instrument, and a "separate but equal" doctrine based upon antiquated considerations, should not, at this time, and in this advanced era, be permitted to perpetuate a situation which denies full equality to Negroes in the pursuit of education.

III.

Segregation in public institutions of learning deprives the Negro student of an important element of the education process and he is thereby denied the equal educational opportunities mandated by the Fourteenth Amendment.

The practice of segregation in the field of education is a denial of education itself. Education means more than the physical school room and the books it contains, and the teacher who instructs. It includes the learning that comes from free and full association with other students in the school. To restrict that association is to deny full and equal opportunities in the learning process. To restrict that association is to deny the constitutional guarantee.

⁶ Socio-Economic Approach to Educational Problems, Misc. No. 6, Vol. 1, p. 1, Federal Security Agency, U. S. Office of Education, Wash., 1942.

Psychologists show us that learning is an emotional as well as an intellectual process: that it is social as well as individual, and is best secured in an environment which encourages and stimulates the best effort of the individual and holds out the hope that this best effort will be accepted and used by society:

From infancy to adulthood the most satisfactory personality development occurs when the individual:

- a. feels he is accepted and wanted by his community
- b. secures aid and encouragement in his activities
- c. has the satisfaction of contributing to the group without too many frustrating experiences
- d. receives the approval of the group or some evidence of recognition.

"Another obvious fact about human development is that it is greatly facilitated by social contacts. . . . Social contacts make possible the enlargement of personal experience by fusing into it the accumulated experiences of the race."⁷ (Here human race is intended.)

"More recently psychologists and other students of education have gained a livelier appreciation of the fact that learning does not take place merely because there exists an intelligence or mind. The physical condition of boys and girls, their emotional responses both in school and out, *all the environmental factors* which impinge upon them have influence upon their growth and development."⁸

"The security needs of children (and adults too) are more numerous and complicated than the elimination of gross fears suggests. They seem to be related to a larger but more subtle need which may be here labeled as the need for orientation. A person finds it desirable to know where he is in the world and how he stands with his fellows. To be 'lost' in either re-

⁷ Judd, Charles H., *Educational Psychology*, p. 3, Houghton Mifflin, 1939.

⁸ Hartmann, George W., *Educational Psychology*, Foreword, p. VI, American Book Co., 1940.

spect is to be in an uncomfortable frame of mind. Not to be spatially, temporally and socially oriented is to be deprived of the *prime conditions for effective learning and growth.*"⁹

In every situation there is the inter-relation of the individual to his group—which is one that increases with his maturity. First it is the family, then the local community, then the state, the nation, and finally the entire world. At no stage of development should any barriers be erected to prevent the individual from moving from a narrower group to a larger one, particularly barriers on race. As Lewin states:

"The group to which an individual belongs is the ground on which he stands, which gives or denies him social status, gives or denies him security and help. The firmness or weakness of this ground might not be consciously perceived, just as the firmness of the physical ground on which we tread is not always thought of. Dynamically, however, the firmness and clearness of this ground determine what the *individual wishes to do, what he can do, and how he will do it.* This is equally true of the social ground as of the physical."¹⁰

Again he states:

"It should be clear to the social scientist that it is hopeless to cope with this problem (discrimination) by providing *sufficient self esteem for members of minority groups* as individuals. The discrimination which these individuals experience is not directed against them as individuals, but as group members and only by raising their *self esteem as group members* to the normal level can a remedy be produced."¹¹

An interesting survey of the opinion of social scientists on the effects of enforced segregation was made by Drs.

⁹ Hartmann, George W., *Educational Psychology*, p. 240, American Book Co., 1940.

¹⁰ Kurt Lewin, "Resolving Social Conflicts," p. 174, Harper & Bros., 1948.

¹¹ *Ibid.*, p. 214.

Max Deutscher and Isidore Chein through a questionnaire¹² to 849 social scientists in all parts of the country. The questionnaire was answered by 571.

"Ninety percent of the total sample express the opinion that enforced segregation has detrimental effects on the segregated groups."¹³

"Eighty-three percent of the respondents believe that enforced segregation has detrimental psychological effects on the group which enforces segregation."¹⁴

A few quotations from the social scientists make clear their views: "Feelings of not being wanted, of being classified as inferiors, of being assigned to low places are destructive to personality and development and injurious alike to slave and master."¹⁵

"Clinical experience and experimental evidence point unmistakably to the conclusion that segregation implies a value judgment which in turn arouses hostility in the segregated and guilt feelings in the segregator. The effect is to set up a vicious circle making for group conflict."¹⁶

"I don't see how anyone could question the statement that power over others—to segregate or any other power—has a psychological effect on both parties or that this effect is bad in any sense for the less powerful groups. The more powerful group may like the effect it has on itself in short term values, but hatred, rebellion, or despair are attitudes they have aroused toward themselves and they will always have to cope with these results sooner or later unless they can practically eradicate the whole minority as Europeans did with the American Indian."¹⁷

¹² Max Deutscher and Isidor Chein, *The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion*, *Journal of Psychology*, 1948-26, pp. 259-287.

¹³ Page 265—above survey.

¹⁴ (See Footnote 12), p. 265.

¹⁵ (See Footnote 12), p. 274.

¹⁶ (See Footnote 12), p. 275.

¹⁷ (See Footnote 12), p. 279.

A practical example of the disastrous effects of segregation in training developed in the early years of the war program. Though the federal government appropriated \$60,000,000 for vocational training in the technical fields of work required for the defense program, thousands of Negroes were kept out of the training and consequently out of jobs. Southern cities which had large Negro labor supply at hand, found themselves overcrowded and short of housing, school facilities and other social services because of the great influx of white workers.

In "The Negro and the War", the authors state:

"As a result of discrimination in defense training courses as well as in employment, there has been a great deal of waste of training facilities. Of a total of 12,472 persons being trained for defense industries in Texas in February 1942 only 206 were Negroes. Yet more than 23,000 defense workers could have been trained with full use of the available equipment."¹⁸

The Fair Employment Practices Act—Executive Order 8802—changed the picture considerably by making it possible for Negroes to get training for war industries. With the training and with enforcement of 8802 by the Fair Employment Practices Committee, thousands of Negroes developed skills and additional earning power which were decided assets to this country during the war.

The results of an equal opportunity for training for war jobs were so beneficial that the Archbishop of San Antonio sent a statement to the House Labor Committee (June, 1944) supporting legislation for a permanent FEPC. In part the statement reads:

"It has been my privilege to observe at close hand the working of the Fair Employment Practices Committee in this part of Texas. I am convinced that this

¹⁸ Earl Brown and George R. Leighton, "The Negro and the War"—Public Affairs Pamphlet No. 71—1942, pp. 14-15.

work is necessary and eminently constructive. It is a work of justice and therefore of peace and democracy. It is an adventure in good government that ought to be made permanent.

"If the people of the United States are glad to pour out treasure and their blood in defense of justice and the human spirit everywhere in the world, they must also be glad to practice justice at home. It is inconceivable that we should willingly deny to our own citizens that measure of justice which we purchase for others with our blood."¹⁹

If education can be made available to all so that each may develop to the fullest and give his contribution to society, we will find a peaceful way—rather than one of human destruction and tragedy—to bring freedom and justice to peoples.

The American Federation of Teachers believes that segregated and discriminatory education is undemocratic and contrary both to sound educational development as well as to the basic law of the land—the United States Constitution. We subscribe to the principle that democratic education provides a total environment which will enable the individual to develop to his capacity, physically, emotionally, intellectually and spiritually.

For such training to be fully effective, it is essential that each individual participate, without barriers of race, creed, or national origin, as a full fledged member in the home, the community, the state and the nation.

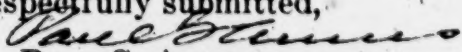
Accordingly, any restriction, particularly in the form of segregated and discriminatory schooling, which prevents the interplay of ideas, personalities, information and attitudes, impedes a democratic education and ultimately prevents a working democracy.

¹⁹ Hearings Before the Committee on Labor, House of Representatives on HR 3986, HR 4004 and HR 4005. Vol. 1, U. S. Govt. Printing Office, 1944, p. 127.

Conclusion.

Segregation of Negroes in public educational institutions in Southern States inevitably results in depriving Negroes of educational opportunities provided by those States for white citizens. Negroes in such States are thereby denied the equal protection of the laws mandated by the Fourteenth Amendment. This Court should end these violations of the constitutional mandate by reversing the judgments in these cases and granting the appellants *McLaurin* and *Sweatt* the relief they pray for.

Respectfully submitted,


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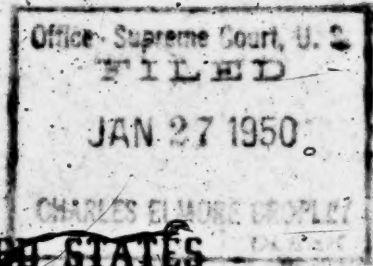
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SUPREME COURT, U. S.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 34

G. W. McLAURIN,

Appellant,

vs.

**OKLAHOMA STATE REGENTS FOR HIGHER
EDUCATION, ET AL.,**

Appellees

**ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF OKLAHOMA**

**BRIEF OF
AMERICAN VETERANS COMMITTEE, INC. (AVC)
Amicus Curiae**

PHINEAS INDREITZ,
Attorney for American Veterans Committee
Amicus Curiae

**JANUARY 27, 1950,
Washington, D. C.**

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TABLE OF AUTHORITIES

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McLAURIN v. OKLAHOMA STATE REGENTS

OCTOBER TERM, 1949

No. 34

BRIEF OF AMERICAN VETERANS COMMITTEE, INC. (AVC) *Amicus Curiae*

Preliminary Statement. This case, and the case of *Sweatt v. Painter* (No. 44, this Term), squarely raise the issue, for the first time, whether it is constitutional for a State to refuse to admit a Negro, solely because of race or color, into a State college to secure graduate education on the same basis as is afforded to white persons. In addition, this case raises the issue whether a State may impose substantial psychological disadvantages on a Negro student at a State college, under the pretext of effectuating its "public policy," and thereby deprive him of equality of opportunity to secure an education.

The American Veterans Committee, Inc. (AVC) has today filed an *amicus curiae* brief in *Sweatt v. Painter*, No. 44, setting forth AVC's interest and views on the first issue mentioned above. In this brief, AVC seeks to aid this Court on the second issue.

The Facts. In January 1948, McLaurin applied for admission to the Graduate College of the University of Oklahoma, the only school maintained by the State of Oklahoma offering a doctorate degree in the field of education. He met

the required standards for admission in all respects except that he is a Negro. He was refused admission only because of his race. He then sought an injunction in a federal district court. That court, convened as a 3-judge district court, ruled that the Oklahoma statutes which penalized the teaching and attendance of white and colored students at the same school (70 Okla. Stats.; 1941, secs. 455, 456, 457) were unconstitutional; but, refused to grant injunctive relief although jurisdiction was reserved "for the purpose of entering any such further orders as may be deemed proper in the circumstances" (R. 34). McLaurin again applied for, and was refused, admission (R. 38), but when he sought further judicial relief, the Board of Regents of the University of Oklahoma voted to admit him "under such rules and regulations as to segregation as the President of the University shall consider to afford to Mr. G. W. McLaurin substantially equal educational opportunities as are afforded to other persons seeking the same education in the Graduate College" (R. 97). McLaurin was admitted in October 1948.

Under the administrative rules of the University, he must sit by himself in an alcove or ante-room outside the door of the class-room, behind a partially concealing section of a wall (R. 51, 52, 56-57, 59, 61, 40). He is not permitted to study in the Library unless he sits by himself at a designated desk beside "half a carload of newspapers" on the fourth level of the library stacks (R. 55, 60-62, 53-56). He is apparently not permitted to take library books home for study, although other students are permitted to do so (R. 56). In addition, he is not permitted to use the University cafeteria; food from the cafeteria is brought to him which he may eat by himself, at other than regular cafeteria hours, in a separate dining room known as "The Jug" (R. 63, 68, 41).

I. THE COMPULSORY ISOLATION OF McLAURIN IS DESIGNED SOLELY TO HUMILIATE HIM AND IMPOSE UPON HIM AN OSTENTATIOUS "BRAND OF INFERIORITY." IT DENIES HIM EQUALITY OF OPPORTUNITY TO LEARN, STIMULATES RACE PREJUDICE, AND PRODUCES PSYCHOLOGICAL LACERATIONS IN BOTH McLAURIN AND HIS WHITE CLASSMATES.

The only possible purpose of the State University's ostentatious and ceremonial compulsory isolation of McLaurin is to symbolize that McLaurin is "of an inferior order; and altogether unfit to associate with the white race." *Dred Scott v. Sanford*, 60 U. S. (19 How.) 393, 407 (1857). In bold view of all, he is dramatically marked as an American "untouchable", whose very shadow defiles.¹ See the photographs in LIFE magazine (Nov. 1, 1948, p. 32) and in TIME magazine (Oct. 25, 1948, p. 44), showing McLaurin and his fellow students seated in class. Cf. Pl. Exh. 1-5, R. 92-96, 52.

McLaurin came to the University of Oklahoma to study. But the humiliation and degradation which the University purposely heaps upon him produce psychological burdens and emotional obstacles infinitely more detrimental to his ability to study than physical disadvantages such as his pillar-obstructed obtuse angle of vision of the blackboard and his inability to see the students at the rear of the classroom. The uncontradicted evidence in this case is that the "strange and humiliating" constant reminders of his "inferiority" are "really handicapping" him so that he "can't study and concentrate"; and that they impair his

¹ Perhaps the University officials also hope that the stigma imposed on McLaurin will discourage other Negroes from seeking admission to the University.

"ability to take in what the professor is giving", and hinder him "from learning and grasping things as fast" (R. 59-60).

During class time he and all his fellow students are subjected to the patent and constant reminder that he is of an inferior caste—that his presence contaminates. That reminder does not end when class time is over. The University continues, both during his study time and during his meal time, to enwrap him in the consciousness of his enforced seclusion, deep in the fourth level of the Library stacks beside "half a carload of newspapers", and hidden away in the confines of "The Jug".

McLaurin is thus being subjected to the full thrust of the deep-seated feelings of humiliation, shame, frustration, resentment, and personal insecurity which compulsory racial segregation, with its blatant advertisement of the Negro's "inferiority", inflicts on almost all Negroes exposed to it. Psychologists and sociologists almost unanimously agree that the resulting psychological tensions generally warp the Negro's personality and set up psychosomatic disturbances with substantial detrimental effects on the Negro's nervous and cardiovascular systems. Deutcher and Chein, *The Psychological Effect of Enforced Segregation: A Survey of Social Science Opinion*, 26 *Journ. of Psychology* 259 (1948); Cooper, *The Frustrations of Being a Member of a Minority Group: What Does It Do to the Individual and to His Relationships With Other People?*, 29 *Mental Hygiene* 189 (1945); McLean, *Psychodynamic Factors in Racial Relations*, 244 *Annals of the American Academy of Political and Social Science* 159, 161 (March 1946). Where human beings are beset with such frustrations, tensions and resentments, they "simply cannot function efficiently." Deutcher and Chein, *supra*, 272.

Manifestly, a person who is purposely singled out for hostile treatment under circumstances which inevitably give rise to nervous strain and emotional tension is not being

treated equally, no matter how "equal" may be the physical facilities afforded to him." • Particularly is this true where, as here, McLaurin is being subjected to this nervous and emotional ordeal while he is engaged in the mental task of learning.

Nor are the psychological lacerations resulting from segregation confined solely to the Negro. The whites are harmed too. Deutcher and Cheln, *supra*, 268. The hypocrisy of this patent demonstration of racism, in the very midst of a great institution of higher education professedly consecrated to the American ideal of equality of opportunity, produces "a kind of moral dry rot which eats away at the emotional and rational bases of democratic beliefs." *To Secure These Rights*, Report of the President's Committee on Civil Rights, 139 (Govt. Printing Off., Oct. 29, 1947); Deutcher and Cheln, *supra*, 272. McLaurin's fellow students, many of whom undoubtedly are opposed to this ludicrous vindication of the State's "public policy",³ are themselves degraded by this living example of the intolerance, prejudice and animosity which education is supposed to eradicate. The bias of a few, given respectability and institutional fixity by the official sanction of the University, is imposed on all. The resultant guilt feelings and degeneration of moral values lead to hypocritical rationalization of the gap between practice and ideal. The theory of race inferiority is perpetuated and race hatred is stimulated. A cycle of guilt, insecurity, distrust, antagonism,

² Compare the Nazis' effective use of ostentatious ostracism, by compelling Jews to wear the Yellow Star, as a device for imposing discrimination; and the outmoded practice of shaming a student by compelling him to sit on a stool in a corner, wearing a dunce cap.

³ There is nothing in the Record, and the State of Oklahoma does not even contend, that McLaurin's fellow students desire that McLaurin be thus isolated. In any event, "The Constitution confers upon no individual the right to demand action by the State which results in the denial of equal protection of the laws to other individuals." *Shelley v. Kraemer*, 334 U. S. 1, 22. (1948).

and prejudice is created, directed at the Negro and ricocheted back at the whites. Deutcher and Chein, *supra*, 277-279. Booker T. Washington epigrammatized the phylogeny of segregation when he remarked that "the white man could not hold the Negro in the gutter without getting in there himself." Gunnar Myrdal, *An American Dilemma, The Negro Problem and Modern Democracy*, 644 (1944).

II. OKLAHOMA'S IMPOSITION OF COMPULSORY OSTRACISM ON McLAURIN IS AN UNJUSTIFIABLE DISCRIMINATION WHICH DENIES HIM THE EQUAL PROTECTION OF THE LAWS.

The court below recognized that "the same facilities" might be afforded under conditions so odious as to amount to a denial of equal protection of the law", but held that "we cannot find any justifiably [sic] legal basis for the mental discomfiture" and "conclude therefore that the classification, based upon racial distinctions, as recognized and enforced by the regulations of the University of Oklahoma, rests upon a reasonable basis, having its foundation in the public policy of the State, and does not therefore operate to deprive this plaintiff of the equal protection of the laws" (R. 42).

We submit that the court below erred in holding that Oklahoma may constitutionally subject McLaurin to "mental discomfiture which makes concentration and study difficult, if not impossible" and impose on him "a badge of inferiority which affects his relationship, both to his fellow students, and to his professors" (Finding of Fact III, R. 41).

The claim that Oklahoma's imposition of compulsory ostracism on McLaurin is justifiable as a part of the State's "public policy", whatever that means, is indeed a watered-down version of the "convenient apologetics of the police power" usually evoked in race litigation. *Morgan v. Vir-*

ginia, 328 U. S. 373, 380 (1946). In fact, the State does not even attempt to pretend that the symbolic isolation of McLaurin is essential "to keep peace and good order among the races" [as does the Southern Railway Company in *Henderson v. United States*, No. 25, this Term, R. 170; Brief, So. Ry. Co., p. 26], or to "better preserve the peace" [as does the Attorney General of Texas in *Sivcott v. Painter*, No. 44, this Term; *The Washington Post*, p. 17, Dec. 30, 1949].

Racism, of course, is no justification for any governmentally imposed discrimination. This Court has consistently held that "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality" [*Hirabayashi v. United States*, 320 U. S. 81, 100 (1943)]; that "discriminations based on race alone are obviously irrelevant and invidious" [*Steele v. Louisville & Nashville R. Co.*, 323 U. S. 192, 203 (1944)]; that "racial antagonism never can" justify legal restrictions based on race [*Korematsu v. United States*, 323 U. S. 214, 216 (1944)]; that "racial discrimination . . . is at war with our basic concepts of a democratic society" [*Smith v. Texas*, 311 U. S. 128, 130 (1940)]; and that "hostility to the race . . . in the eye of the law is not justified . . . is, therefore, illegal" [*Yick Wo v. Hopkins*, 118 U. S. 356, 374 (1886)]. Oklahoma's "public policy", and its effect upon the fundamental personal rights and liberty which the United States Constitution promises to McLaurin, must therefore be measured "in the light of a Constitution that abhors . . . racism." Justice Murphy (concurring), *Steele v. Louisville & Nashville R. Co.*, *supra*, at p. 208.

The fact that the discrimination here imposed on McLaurin is partially psychological and relates to community attitudes and individual feelings does not make it any less cognizable in law. Anglo-American law has long granted

judicial protection against defamations which subject a person "to contempt, hatred, scorn, or ridicule, and which, by thus engendering an evil opinion of him in the minds of right-thinking men, tend to deprive him of friendly intercourse and society" [*Odgers on Libel and Slander*,⁸ p. 16 (4th ed., 1905)], or which "tends to disgrace a man, lower him in or exclude him from society or bring him into contempt or ridicule." [Newell, *The Law of Slander and Libel*, p. 2 (4th ed., 1924)].

The essence of the injury is the imposition of public obloquy and odium, whether done with or without writing or words, *e. g.* "riding skimmington" to ridicule a henpecked husband publicly;⁴ portraying a person as the Beast in a painting of Beauty and the Beast;⁵ painting a man "playing at cudgels with his wife";⁶ making a drawing of a person in a pillory;⁷ or setting a lamp in front of a person's dwelling where the popular significance, in the social setting and circumstances of the place and time, was to mark a brothel, and thus to impute reproach, odium and ignominy.⁸ Chief Justice Holt's statement of 250 years ago is applicable today: "Scandalous matter is not necessary to make a libel, it is enough if the defendant induces an ill opinion to be had of the plaintiff, or to make him contemptible and ridiculous."⁹

Moreover, the numerous decisions of Southern courts awarding damages for "humiliation" to a white person who

⁴ *Mason v. Jennings*, Sir. T. Raym. 401, 83 Eng. Repr. 209 (1680); *Sir William Bolton v. Deane*, cited in *Austin v. Culpepper*, 2 Show. K.B. 313, 89 Eng. Repr. 960 (1682).

⁵ *Du Bost v. Beresford*, 2 Camp. 511, 170 Eng. Repr. 1235 (1810).

⁶ *Anon.*, 11 Mod. 99, 88 Eng. Repr. 921, 922 (1717).

⁷ *Austin v. Culpepper*, 2 Show. K.B. 313, 89 Eng. Repr. 960; *Skin.* 123, 90 Eng. Repr. 57 (1682).

⁸ *Jefferies v. Duncombe*, 11 East 226, 103 Eng. Repr. 991; 2 Camp. 3, 170 Eng. Repr. 1061 (1809).

⁹ *Cropp v. Tilney*, 3 Salk. 225, 226, 91 Eng. Repr. 791 (1699).



has been compelled to ride in the Negro section of a train,¹⁰ or who is excluded from an office-building elevator set apart for whites and compelled to ride in an elevator set apart for Negroes,¹¹ or who has been called "colored" or "mulatto",¹² are all based on the proposition that strong feelings of contempt and scorn are directly associated with the view that Negroes have an inferior caste status and that the compulsory segregation of Negroes is intended to reflect such inferior caste status. The Supreme Court of Oklahoma, in *Collins v. Oklahoma State Hospital*, 76 Okla. 229, 184 Pac. 946, 947 (1919), has candidly recognized this proposition:

" . . . In this state, where a reasonable regulation of the conduct of the races has led to the establishment of separate schools and separate coaches, and where conditions properly have erected insurmountable barriers between the races when viewed from a social and a personal standpoint, and where the habits, the disposition, and characteristics of the race denominate the colored race as inferior to the Caucasian, it is libelous per se to write of or concerning a white person that he

¹⁰ *Louisville & N. R. Co. v. Ritchel*, 148 Ky. 701, 147 S. W. 411 (1912); *Missouri, K. & T. Ry. Co. of Texas v. Bull*, 25 Tex. Civ. App. 500, 61 S. W. 327 (1901); *Chicago, R. I. & P. Ry. Co. v. Allison*, 120 Ark. 54, 178 S. W. 401 (1915).

¹¹ *O'Connor v. Dallas Cotton Exchange*, 153 S.W. (2d) 266 (Ct. Civ. App., Texas, 1941).

¹² *Flood v. News & Courier Co.*, 71 S. Car. 112, 50 S.E. 637 (1905); *Vofse v. Georgia Ry. & Electric Co.*, 2 Ga. App. 499, 58 S.E. 899 (1907); *Collins v. Okla. State Hosp.*, 76 Okla. 229, 184 Pac. 946 (1919); *Spion v. Times-Democrat Publ. Co.*, 104 La. 141, 28 So. 970 (1900) ("outrageous wrong"); *Spotorno v. Fourichon*, 40 La. Ann. 423, 4 So. 71 (1888); *Spencer v. Looney*, 116 Va. 767, 82 S. E. 745 (1914); *Hargrove v. Okla. Press Publ. Co.*, 130 Okla. 76, 265 Pac. 635 (1928); *Jones v. L. L. Polk & Co.*, 190 Ala. 243, 67 So. 577 (1915). Cf. *King v. Wood, Nott & McCord*, 184 (S. Car., 1818); *Atkinson v. Hartley*, 1 McCord 63 (S. Car. 1821); *Eden v. Legare*, 1 Bay 171 (S. Car. 1791).

is colored. Nothing could expose him to more obloquy or contempt, or bring him into more disrepute, than a charge of this character."

The Fourteenth Amendment was adopted with full recognition of the disadvantages resulting from an inferior caste status imposed by law. Chief Justice Taney, in the historic decision in *Dred Scott v. Sanford*, 60 U. S. (19 How.) 393, 407 (1857), had described Negroes as having "for more than a century before been regarded as beings of an inferior order; and altogether unfit to associate with the white race, either in social or political relations; and so far inferior that they had no rights which the white man was bound to respect." The Fourteenth Amendment was particularly intended to repudiate the *Dred Scott* decision. It therefore reached beyond the Thirteenth Amendment (which abolished slavery and involuntary servitude) to elevate the Negro to full citizenship and complete equality before the law. It did not provide for "second-class citizenship" or prescribe "separate but equal" treatment; instead, it "made the rights and responsibilities, civil and criminal, of the two races *exactly the same*." *Virginia v. Rives*, 100 U. S. 313, 318 (1880) (emphasis supplied).

In *Strauder v. West Virginia*, 100 U. S. 303 (1880), this Court pointed out that the Fourteenth Amendment was framed and adopted to protect the colored race, which "had long been regarded as an *inferior* and subject race", against state action designed "to perpetuate the *distinctions* that had before existed." (at p. 306). The Fourteenth Amendment granted "a positive immunity, or right, most valuable to the colored race,—*the right to exemption from unfriendly legislation against them distinctively as colored*,—exemption from legal discriminations, *implying inferiority in civil society*, lessening the security of their enjoyment of the

rights which others enjoy, and discriminations which are steps toward reducing them to the condition of a subject race. . . . The very fact that colored people are *singled out* . . . is practically a *brand upon them*, affixed by the law, an *assertion of their inferiority*, and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others." (pp. 307-308). (Emphasis supplied).

In *Ex parte Virginia*, 100 U. S. 339, 344-345 (1880), this Court said: "One great purpose of these amendments was to raise the colored race from that *condition of inferiority and servitude* in which most of them had previously stood, to *perfect equality of civil rights* with all other persons within the jurisdiction of the States. They were intended to take away all possibility of oppression by law because of race or color." (Emphasis supplied).

Even *Plessy v. Ferguson*, 163 U. S. 537 (1896) (which we have roundly criticized in AVC's *amicus curiae* briefs in *Anderson v. United States*, No. 25, and *Sweatt v. Painter*, No. 44, now pending before this Court) recognized the impact of the Constitution against a State-imposed inferior caste status. By asserting, as an assumed fact, that segregation laws "do not necessarily imply the inferiority of either race to the other" (pp. 544, 551) (emphasis supplied), *Plessy* indicated that segregation laws would be unconstitutional where they implied that one race is inferior to another race.

Justice Harlan's prophetic dissent in *Plessy* against state enactments, which, in fact, proceed on the ground that colored citizens are so inferior and degraded that they must not be allowed to sit "with white people" (at p. 560) has been underscored by more than 50 years of experience, every survey of racial segregation and every scientific

study of its effects have confirmed "this basic fact: a law which forbids a group of American citizens to associate with other citizens in the ordinary course of daily living creates inequality by imposing a caste status on the minority group." *To Secure These Rights*, Report of the President's Committee on Civil Rights, p. 82 (Oct. 29, 1947). See also Gunnar Myrdal, *An American Dilemma, The Negro Problem and Modern Democracy*, p. 681 (1944); *Higher Education in American Democracy*, Report of the President's Commission on Higher Education, Vol. II, p. 31 (Dec. 11, 1947); *Segregation in Washington*, Report of the National Committee on Segregation in the Nation's Capital (Dec. 10, 1948).

The evident purpose of Oklahoma's imposition of compulsory ostracism on McLaurin is to humiliate and degrade him, to subject him to public obloquy and contempt, "to put him in his place" as a creature "of an inferior order; and altogether unfit to associate with the white race." The natural and actual effect of this compulsory isolation is to create nervous and emotional tensions under which he "simply cannot function efficiently." And all scientific studies of racial segregation have demonstrated that its compulsion by force of law operates to submerge the Negro into an inferior caste status. In the light of these facts, and in view of the historic purpose of the Fourteenth Amendment to bar the States from using the power of government to submerge the Negro into an inferior caste status, we submit that the compulsory isolation which the State of Oklahoma imposes on McLaurin denies him the equal protection of the laws commanded by the Fourteenth Amendment. The Constitution "nullifies sophisticated as well as simple minded modes of discrimination." *Lane v. Wilson*, 307 U. S. 268, 275 (1939); *Fick Wo v. Hopkins*, 118 U. S. 356 (1886); *Yu Cong Eng v. Trinidad*, 271 U. S. 500, 525-

527 (1926); *Takahashi v. Fish & Game Commission*, 334
U. S. 410, 420 (1948).

Respectfully submitted,

AMERICAN VETERANS COMMITTEE, INC. (AVC)

Amicus Curiae.

PHINEAS INDRLTZ,

Attorney for American Veterans Committee,

Amicus Curiae.

JANUARY 27, 1950.

Washington, D. C.

(6213)

In the Supreme Court of the United States

OCTOBER TERM, 1949

✓

No. 34

✓ G. W. McLAURIN, APPELLANT

v.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION,
BOARD OF REGENTS OF UNIVERSITY OF
OKLAHOMA, ET AL.

No. 44

HEMAN MARION SWEATT, PETITIONER

v.

THEOPHILIS SHICKEL PAINTER ET AL.

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

These cases, together with No. 25, *Henderson v. United States*, have great importance to the Government and the people of the United States. They are significant because they test the vitality and strength of the democratic ideals

to which the United States is dedicated. The cases at bar do not present isolated instances of racial discrimination by private individuals. On the contrary, the asserted discriminations relate to practices systematically engaged in by the States themselves, and come before this Court bearing the endorsement of the laws of these States. The decisions in these cases may thus have large influence in determining whether the foundations of our society shall continue to be undermined by the existence and acceptance of racial discriminations having the sanction of law.

McLaurin and Sweatt are Negroes. For that reason alone they have been subjected under the laws of the States in which they live to various educational restrictions not imposed on white students. McLaurin, a graduate student at the University of Oklahoma preparing for a doctor's degree in education, is required to sit at a special desk set aside for him in the doorway of the classroom; he may use the library, but only if he takes his books to a designated desk on the mezzanine floor; he may eat in the school cafeteria, where he is served the same food as other students, but only at a different time and at a table specially set apart for his use. Sweatt has been excluded from the University of Texas Law School, which is reserved for white students. Instead, he has been offered the privilege of applying for admission to a new law school, for Negroes only, which the State has undertaken to establish.

The Fourteenth Amendment, which became part of the Constitution in 1868, forbids any State to "deny to any person within its jurisdiction the equal protection of the laws." In an impressive series of decisions, extending over a period of more than three-quarters of a century, this Court (with the principal exception of *Plessy v. Ferguson*, 163 U. S. 537) has construed the Amendment liberally so as to carry out its purposes, namely, to establish complete equality in the enjoyment of fundamental human rights and to secure those rights against governmental discriminations based on race or color. *Strauder v. West Virginia*, 100 U. S. 303, decided in 1880, was the first case in which the Court was called upon to define the scope of the Amendment as applied to distinctions based on race or color. The interpretation of the Fourteenth Amendment made in that case (pp. 306-308) is especially significant, not merely because of its comprehensive nature, but because it was written by a Court whose members lived during the period when the Amendment was enacted:

This [the Fourteenth Amendment] is one of a series of constitutional provisions having a common purpose; namely, securing for a race recently emancipated, a race that through many generations had been held in slavery, all the civil rights that the superior race enjoy. The true spirit and

meaning of the amendments, as we said in the *Slaughter-House Cases* (16 Wall. 36), cannot be understood without keeping in view the history of the times when they were adopted, and the general objects they plainly sought to accomplish. At the time when they were incorporated into the Constitution, it required little knowledge of human nature to anticipate that those who had long been regarded as an inferior and subject race would, when suddenly raised to the rank of citizenship, be looked upon with jealousy and positive dislike, and that State laws might be enacted or enforced to perpetuate the distinctions that had before existed. Discriminations against them had been habitual. It is well known that in some States laws making such discriminations then existed, and others might well be expected. The colored race, as a race, was abject and ignorant, and in that condition was unfitted to command the respect of those who had superior intelligence. Their training had left them mere children, and as such they needed the protection which a wise government extends to those who are unable to protect themselves. They especially needed protection against unfriendly action in the States where they were resident. It was in view of these considerations the Fourteenth Amendment was framed and adopted. It was designed to assure to the colored race the enjoyment of all the civil rights that under the law are

enjoyed by white persons, and to give to that race the protection of the general government, in that enjoyment, whenever it should be denied by the States. It not only gave citizenship and the privileges of citizenship to persons of color, but it denied to any State the power to withhold from them the equal protection of the laws, and authorized Congress to enforce its provisions by appropriate legislation. * * *

If this is the spirit and meaning of the amendment, whether it means more or not, it is to be construed liberally, to carry out the purposes of its framers. It ordains that no State shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States (evidently referring to the newly made citizens, who, being citizens of the United States, are declared to be also citizens of the State in which they reside). It ordains that no State shall deprive any person of life, liberty, or property, without due process of law, or deny to any person within its jurisdiction the equal protection of the laws. What is this but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their

color? The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, of right, most valuable to the colored race,—the right to exemption from unfriendly legislation against them distinctively as colored,—exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race.

Strauder v. West Virginia was soon followed by a number of other cases in which the Court continued to give broad effect to the constitutional principle that all men stand equal and alike before the law, and that legal distinctions drawn solely on the basis of race or color are incompatible with the guarantee of equal protection of the laws. *E. g.*, *Virginia v. Rives*, 100 U. S. 313 (1880); *Ex parte Virginia*, 100 U. S. 339 (1880); *Neal v. Delaware*, 103 U. S. 370 (1881); *Bush v. Kentucky*, 107 U. S. 110 (1883). And in a line of decisions extending to the present time, the Court has applied this broad doctrine in a great variety of factual contexts. To cite only some of the more familiar cases, and the dates when they were decided, is to show that equality is not an abstract concept but a living principle firmly rooted in our basic law: *Yick Wo v. Hopkins*, 118 U. S. 356 (1886); *McCabe v. Atchison, T. &*

S. F. Ry. Co., 235 U. S. 151, 161 (1914); *Truax v. Raich*, 239 U. S. 33 (1915); *Buchanan v. Warley*, 245 U. S. 60 (1917); *Nixon v. Herndon*, 273 U. S. 536 (1927); *Nixon v. Condon*, 286 U. S. 73 (1932); *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337 (1938); *Mitchell v. United States*, 313 U. S. 80, 94-97 (1941); *Hill v. Texas*, 316 U. S. 400 (1942); *Sipuel v. Board of Regents*, 332 U. S. 631 (1948); *Shelley v. Kraemer*, 334 U. S. 1, and *Hurd v. Hodge*, 334 U. S. 24 (1948); *Takahashi v. Fish and Game Commission*, 334 U. S. 410 (1948).

In *Shelley v. Kraemer*, which outlawed judicial enforcement of racial restrictive covenants on real property, the Court again took occasion to reaffirm the broad construction made in *Strauder v. West Virginia*. Mr. Chief Justice Vinson wrote for the Court (334 U. S. at 23):

The historical context in which the Fourteenth Amendment became a part of the Constitution should not be forgotten. Whatever else the framers sought to achieve, it is clear that the matter of primary concern was the establishment of equality in the enjoyment of basic civil and political rights and the preservation of those rights from discriminatory action on the part of the States based on considerations of race or color. Seventy-five years ago this Court announced that the provisions of the Amendment are to be construed with this fundamental purpose in mind.

With specific reference to the field of education, it has been held that, while a State is not obliged to furnish higher education to any of its citizens, if it offers such education to its white residents, the Constitution requires that the same privilege be extended on equal terms to its colored residents. *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337; *Sipuel v. Board of Regents*, 332 U. S. 631. The constitutional requirement is that of *equality*, not merely in one sense of the word but in every sense. Nothing in the Fourteenth Amendment, or in the cases decided under it, supports the notion that facilities need be equal only in a physical sense.

In the cases at bar the facilities of the University of Oklahoma have been made available to McLaurin, but only under conditions in which the spirit of free intellectual inquiry plainly can not long survive. As to Sweatt, the briefs submitted by him and the other *amici curiae* amply demonstrate that the institution which the State has established for the purpose of providing legal education for its colored residents falls far short of being the equal of the Law School of the University of Texas. The argument is made, however, that the State cannot overnight establish for its Negro citizens a law school comparable in all respects to that now available to its white citizens, and that the Constitution is satisfied if the State in good faith undertakes to provide facilities which will eventually be "equal" to those of

the University of Texas. But it does not answer Sweatt's present claim to say that, at some unspecified time in the future, colored persons as a group will be treated equally. The right to equal legal education which Sweatt asserts is a personal one, and the State can discharge its obligation to him only by providing him such education "as soon as it does for applicants of any other group." *Sipuel v. Board of Regents*, 332 U. S. 631, 633. The Constitution cannot be construed to require Sweatt to postpone or forego his legal education until the State of Texas establishes an "equal" law school for colored students. If it were so construed, his constitutional right would have neither meaning nor value.

Moreover, the fact of racial segregation is itself a manifestation of inequality and discrimination. The argument to the contrary is derived principally from *Plessy v. Ferguson*, 163 U. S. 537, which, almost three decades after the Fourteenth Amendment was adopted, read into it for the first time an implied limitation that enforced racial segregation does not violate the Amendment so long as the separate facilities are "equal." In the brief for the United States in the *Henderson* case, No. 25, we have argued that the "separate but equal" theory of *Plessy v. Ferguson* is wrong as a matter of law, history, and policy. The United States in these cases again urges the Court to repudiate the "separate but equal" doctrine as an unwarranted deviation from the principle

of equality under law which the Fourteenth Amendment explicitly incorporated in the fundamental charter of this country.

Under the Constitution every agency of government, federal and state, must treat our people as *Americans*, and not as members of particular groups divided according to race, color, religion, or national ancestry. All citizens stand equal and alike in relation to their government, and no distinctions can be made among them because of race or color or other irrelevant factors. The color of a man's skin has no constitutional significance. If the Constitution is construed to permit the enforced segregation of Negroes, there would be no constitutional barrier against singling out other groups in the community and subjecting them to the same kind of discrimination.¹

"Separate but equal" is sometimes described as an "ancient" doctrine of constitutional law. But it is derived not from the Constitution but

¹ In recommending the elimination of segregation, based on race, color, creed, or national origin, from American life, the President's Committee on Civil Rights stated:

"The separate but equal doctrine has failed in three important respects. First, it is inconsistent with the fundamental equalitarianism of the American way of life in that it marks groups with the brand of inferior status. Secondly, where it has been followed, the results have been separate and unequal facilities for minority peoples. Finally, it has kept people apart despite incontrovertible evidence that an environment favorable to civil rights is fostered whenever groups are permitted to live and work together. There is no adequate defense of segregation."

(*To Secure These Rights*, p. 166).

from a judicial expression which did not make its appearance in the reports of this Court until 1896, and which is irreconcilable with the body of precedents which preceded and followed it. Here, therefore, as in *Helvering v. Hallock*, 309 U. S. 106, 122, the "real problem is whether a principle shall prevail over its later misapplications." The *Hallock* opinion gives the clear answer. To alter slightly the Court's language in that case: "Surely we are not bound by reason or by the considerations that underlie *stare decisis* to persevere in distinctions taken in the application of [the Fourteenth Amendment] which, on further examination, appear consonant neither with the purposes of the [Amendment] nor with this Court's own conception of it." (*Ibid.*)²

The subordinate position of Negroes in this country has been described as the greatest unsolved task for American democracy. The racial discriminations typified by these cases represent a challenge to the sincerity of our profession of the democratic faith. The President has stated: "If we wish to inspire the peoples of the world whose freedom is in jeopardy, if we wish to restore hope to those who have already lost their

² In *Passenger Cases*, 7 How. 283, 470, Chief Justice Taney agreed "if be regarded hereafter as the law of this court, that its opinion upon the construction of the Constitution is always open to discussion when it is supposed to have been founded in error, and that its judicial authority should hereafter depend altogether on the force of the reasoning by which it is supported."

civil liberties, if we wish to fulfill the promise that is ours, we must correct the remaining imperfections in our practice of democracy. We know the way. We need only the will."

The Court is here asked to place the seal of constitutional approval upon an undisguised species of racial discrimination. If the imprimatur of constitutionality should be put on such a denial of equality, one would expect the foes of democracy to exploit such an action for their own purposes. The ideals embodied in our Bill of Rights would be ridiculed as empty words, devoid of any real substance. The lag between what Americans profess and what we practice would be used to support the charges of hypocrisy and the decadence of democratic society.⁴ The words of Mr. Justice Harlan, dissenting in *Plessy v. Ferguson*, 163 U. S. 537, 562, are as pertinent today as when they were written more than fifty years ago:

We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of the law which, practically, puts the brand of servitude and degradation upon a

³ Message to the Congress, February 2, 1948, H. Doc. No. 516, 80th Cong., 2d sess., p. 7.

⁴ Concrete illustrations of the extent to which the existence of racial discrimination in this country embarrasses the United States in the conduct of foreign affairs are set forth in the Government's brief in the *Henderson* case, pp. 60-63.

large class of our fellow-citizens, our equals before the law. The thin disguise of "equal" accommodations * * * will not mislead any one, nor atone for the wrong this day done.

It is in the context of a world in which freedom and equality must become living realities, if the democratic way of life is to survive, that the issues in these cases should be viewed. In these times, when even the foundations of our free institutions are not altogether secure, it is especially important that it again be unequivocally affirmed that the Constitution of the United States, like the Declaration of Independence and the other great state papers in American history, places no limitation, express or implied, on the principle of the equality of all men before the law. The proposition that all men are created equal is not mere rhetoric. It summarizes a rule of law embodied in the Constitution, the supreme law of the land, and thus is binding on the Federal and State governments and all their officials. See *Truax v. Corrigan*, 257 U. S. 312, 332; *Hill v. Texas*, 316 U. S. 400, 406; *Hirabayashi v. United States*, 320 U. S. 81, 100; Civil Rights Act of May 31, 1870, c. 114, § 16, 16 Stat. 144, 8 U. S. C. 41.

Disregard of constitutional rights does not raise issues merely of "civil liberties." It involves considerations which go to the essence of law enforcement in a democracy. A basic postulate of democratic government is that a valid law must be

enforced and obeyed, even by those who disagree with it or against whose firmly held convictions the law may run counter. Citizens and officials cannot be relieved of their obligation to respect the law, simply because they regard it as unwise or wrong. Nor can personal beliefs or prejudices justify failure to respect the legal rights of others. The right of all Americans to equal treatment under law is specifically guaranteed by the Constitution and laws of the United States. Like other legal rights, it must be recognized and enforced by all persons and by every instrumentality of governments. To countenance disregard of such right is to sanction disrespect for law and thereby weaken the fabric of our society.

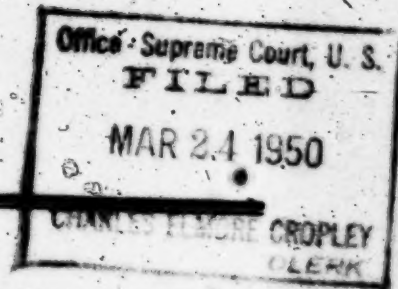
Respectfully submitted.

PHILIP B. PERLMAN,
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PHILIP ELMAN,
Special Assistant to the Attorney General.

FEBRUARY 1950.

**LIBRARY
SUPREME COURT, U. S.**



**IN THE
Supreme Court of the United States**

October Term, 1949

No. 34

G. W. McLAURIN, APPELLANT,

vs.

**OKLAHOMA STATE REGENTS FOR HIGHER EDUCA-
TION, BOARD OF REGENTS OF UNIVERSITY OF
OKLAHOMA, ET AL.**

**BRIEF FOR THE CONGRESS OF INDUSTRIAL
ORGANIZATIONS AS AMICUS CURIAE**

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IN THE
Supreme Court of the United States

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No. 34

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**BRIEF FOR THE CONGRESS OF INDUSTRIAL
ORGANIZATIONS AS AMICUS CURIAE**

1. This brief *amicus curiae* is submitted by the Congress of Industrial Organizations with the consent of the parties. It is not submitted by the CIO only because the CIO is an organization dedicated to the maintenance and extension of our democratic rights and civil liberties which therefore has an interest in the elimination of segregation and discrimination from every phase of American life. The CIO's interest is also direct and practical. The CIO is a voluntary association of trade unions, all of which operate on the premise that the working men of America will join together in free trade unions in which there are no distinctions based on color. The CIO, through its Southern Organizing Committee, is proving daily by its organization of working men into non-segregated unions, that the myth of incompatibility between white and Negro is but a myth and that free men, given the choice which democracy prescribes, will associate themselves together without

regard to accidents of pigmentation of the skin. Prejudice, it is true, must be overcome. And it is, in fact, being overcome daily. But laws, ordinances and regulations requiring segregation are more than prejudice. They are affirmative acts of the state requiring the community to practice prejudice. They are imposed by the state equally on those who subscribe to prejudice and those who abhor it. They are the opposite of free choice. And these regulations, ordinances and statutes have in fact been used in an attempt to require CIO organizations to practice segregation when the members of the CIO themselves do not desire so to do.

These regulations, ordinances and statutes rest constitutionally on reasoning identical with that adopted by the District Court in the present case. The disposition which this court makes of the case is, therefore, of interest to the CIO not only because of the CIO's opposition to segregation in principle but also because an affirmance of the decision below will, by sustaining the power of the states to compel segregation, directly affect the efforts of the CIO to build a non-segregated trade union movement in the United States.

2. The instant case is but one of three cases in which the general problem of the constitutionality of the enforced separation of races in publicly offered facilities is presented. Briefs almost without number have been submitted to the court in these three cases canvassing again and again the decisions of the Court dealing with segregation and the social and practical considerations involved in the maintenance of separate school systems and transportation facilities. It is not our purpose here again to review the cases or the other material thus presented. The function of an *amicus* brief is to provide assistance to the Court and, in a sincere desire to do so, we offer the following observations concerning the nature of the question which is presented for decision in all three cases.

We believe that the question should be phrased somewhat differently than the parties have phrased it. The question, as usually stated, is whether the States may constitutionally provide separate but equal facilities for white and colored. In our view, the basic question is whether the States have the power to require the separation of races for the purpose of

forcing a pattern of segregation upon the members of the community.'

The difference between the two questions is perhaps best illustrated by the facts in the instant case. The appellant McLaurin has not been denied admission to the University of Oklahoma. Under compulsion of the Federal Constitution, the University has admitted him and is now engaged in offering to him the identical course of instruction which it offers to other students. But the University, as well as every other college, school or institution in the State of Oklahoma, must comport itself in accordance with the criminal laws of Oklahoma. And these laws forbid the operation of non-segregated schools or attendance at such schools. (See Appendices A and B to Brief for Appellant.) The University has, therefore, sought to preserve the essence of the state's policy against commingling of the races. It has done so by requiring McLaurin to sit at a special segregated seat in the classroom, to eat at a special segregated table in its cafeteria, and to study at a special segregated desk in the library. Thus, ingeniously, it offers to McLaurin the same classes, the same teachers, the same food and the same books as it offers to others, but it does so on a segregated basis. There can be no argument as to the equality of instruction, equality of food, or equality of library resources offered to McLaurin because that which is offered to him is identical with that which is offered to others. There remains, clearly and strikingly, only the single question as to whether the State of Oklahoma may require that these facilities can only be offered when accompanied by the stigma of segregation.

The Oklahoma scheme thus narrows the issue presented to the Court. In so doing, however, it clarifies and accentuates the vicious and unconstitutional basis upon which the entire system of segregated education rests. It is not simply a question of providing separate but equal facilities in state institutions. The significant question is whether a state may compel

¹ The question in the *Henderson* case differs in that the governmental agency is the Interstate Commerce Commission and the governing provision is the Interstate Commerce Act. But, as we have pointed out in our brief *amicus* in that case, the substantive issue is the same.

the practice of segregation by its citizens, or, as applied to education in the University of Oklahoma, whether a state institution may compel its students to separate themselves by a line based on race.

This issue, so clearly shown by the facts of the *McLaurin* case, may be confused by phrasing it in terms of the provision of "separate but equal" facilities. The evil in "separate but equal" systems of higher education is not the separation but its compulsory enforcement. If the University of Oklahoma permits white students to shun Negroes, and Negroes to shun whites, there is no constitutional problem. The problem arises only because the University of Oklahoma compels its white students to separate themselves from Negroes and Negroes to separate themselves from whites. Similarly, there can be no complaint because the State of Texas has established a Negro law school. The problem is created because Texas will not permit Negroes, or whites, to make a choice as to which law school they wish to attend.'

The issue then is whether a state may, under the provisions of the Fourteenth Amendment, compel the practice of segregation in its institutions of higher learning. The argument that the separation of the races is customary, or usual, or desired by the citizens of the Southern States does not meet that issue. Those students who wish to avoid sitting in proximity to *McLaurin*, or eating with him, or studying at the same library table with him, would be free to do so in the absence of the regulations here attacked. The function of the regulations is not to permit them to practice segregation but to require them to do so.

² It is for this reason that the argument of the eleven Attorneys General (Brief of Arkansas, Florida, etc., No. 44, pp. 16-17) that the provision of Negro schools is beneficial to Negroes in the South is irrelevant. It is not the existence of Meharry Medical School which is here attacked. It is the use of such schools as a justification for the exclusion of Negroes from other schools. If compulsory segregation were declared unconstitutional and if, as is claimed, it is possible to establish "Negro" schools which are equal or superior in all respects to those now established for whites, and which Negroes in fact would prefer, then presumably the efforts of the Southern States would be directed toward making the "Negro" school sufficiently attractive so that, as a matter of free choice and not as a matter of compulsion, Negroes would choose to attend them rather than "white" schools.

3. The real question in this case, and in the other two cases before the Court, is, therefore, whether the states have the power to force the practice of segregation upon the community. Like other constitutional questions, this question cannot be answered in a vacuum. And it may be that it is not susceptible of a categorical answer applicable in all circumstances. It may be necessary to inquire as to the purpose for which the state in a particular case requires the practice of segregation.

It is in this frame of reference that the brief submitted by the Attorneys General of eleven southern states is pertinent. Compulsory segregation is necessary, say the Attorneys General, to "maintain the public order, peace and safety" (Brief of Arkansas, Florida, etc. in No. 44, p. 3). The difficulty with this contention is simply that it is irrelevant to the cases before the Court. There is not the slightest evidence that the prevention of disorder was the purpose or object of the regulations adopted by the University of Oklahoma. To the contrary, the question posed by Governor Turner to the Attorney General of Oklahoma was "as to the authority of the Board of Regents . . . to enact rules and regulations that would offer instruction to McLaurin in accordance with the Federal Courts ruling, but would preserve, in so far as we may do so, segregated instruction at the University." (R. 101.) The object of the regulations enacted pursuant to the opinion of the Attorney General was not to avoid disorder or preserve order. The object was, as stated, to "preserve . . . segregated instruction at the University."

The question presented in this case, then, is not whether the Fourteenth Amendment forbids compulsory segregation where it is found to be necessary to preserve public order and prevent disturbances. The question is, rather, whether the maintenance of segregation, as an objective *per se*, is an objective compatible with the provisions of the Fourteenth Amendment.

This is the question upon which the court below passed in this case. It did not, and it could not on the record before it, find that the distinctions based on color employed by the State of Oklahoma were necessary or proper as "an exercise of the police power of the states to maintain the public order, peace, and safety of both races." Rather, it found that they

had their foundation in "the public policy of the State" to recognize racial distinctions as a basis for classification (R. 41-42) and it held that compulsive regulations based solely on this public policy did not contravene the requirements of the Fourteenth Amendment.

The argument of the eleven Attorneys General is thus seen to be entirely irrelevant. The question to which they give a negative answer is whether a state, in the exercise of its police powers, is barred from enforcing distinctions based on race in order to preserve public order. But the question presented here is whether a state may enforce distinctions based on race in order simply to preserve those distinctions; or, perhaps more accurately, whether the Fourteenth Amendment has deprived the states of the power to require the segregation of whites and Negroes for the sole purpose of preserving and maintaining the public policy of the states that there is a difference between whites and Negroes. And, to that question, we submit there must be an affirmative answer.

The difference between the questions is accentuated here by the fact that the brief of the Attorneys General of the eleven States is entirely devoted to the subject of segregation in public schools, despite the fact that the two cases before the Court involving education are concerned only with graduate instruction at the university level. It is further accentuated by the inclusion, as an appendix to that brief, of a collection of constitutional provisions which relate only to public schools and are entirely inapplicable to state universities.

We do not mean to say that some of the same considerations may not be applicable at both levels of instruction. Nor do we mean to admit that the preservation of public order or of the public school system of the South would necessarily justify distinctions or differences based on race. (Indeed, *Buchanan v. Worley*, 245 U. S. 60, would seem to hold to the contrary.) What we do wish to say, and emphatically, is that the only question here is segregation in education *per se* and *pro se*. There is no basis for asserting that compulsory segregation in higher education is only a means to achieve the end of preserving order. That assertion has, indeed, not been made with regard to higher education. Compulsory segrega-

tion in higher education is, simply and admittedly, segregation for its own sake and nothing more.

In deciding these cases dealing with segregation in higher education, therefore, it is not necessary for the Court to determine whether the equal protection clause of the Fourteenth Amendment is to be construed, when matters of racial distinction are involved, as an absolute command or, like the due process clause, as a flexible standard under which distinctions as to race are permissible if the classification has a genuine relationship to some *other* permissible state objective. Such a determination is not necessary because it is not claimed that the regulations based on color employed by Texas and Oklahoma, which require the practice of segregation in institutions of higher education, have any rational basis other than the desire of Texas and Oklahoma to preserve distinctions based on color.

Public schools and swimming pools may present different problems, and in a case involving public schools or swimming pools it may be appropriate for the Court to consider whether a classification by race is permissible if such a classification is necessary to achieve some necessary public purpose. But this is not such a case. Here, the question is only whether a state may require segregation for the sake of segregation, nothing more.

That this is the issue in the instant case cannot be disputed. It is the public policy of the State of Oklahoma that Negroes and whites may not study together in any "college, school or institution." A statute forbids any person to operate any institution in which both white and colored are received as pupils unless it is operated on a segregated basis. And it is further made a crime to teach in a mixed school or to attend a mixed school. Pursuant to this policy the University of Oklahoma has decreed that white students, whatever their own inclinations may be, shall not be permitted to sit in proximity to Negroes, or eat at the same table with them, or study in the same reading room with them. And so, an alcove, or a railing, or a separate table is provided "For Negroes Only."

These regulations, and the statutes to which they conform, are not permissive. They do not simply permit whites to sep-

arate themselves from Negroes, or Negroes to separate themselves from whites. They are compulsory. They forbid the abandonment of prejudice and enforce adherence to the practice of segregation.

To what end? Surely not to preserve public order in institutions where students or instructors may desire to end the practice of segregation. Nor, certainly, to confer upon Negroes any special mark of approval or approbation. The purpose and intent of the regulations and statutes here involved, whatever may be the justifications offered, is to stamp the Negro as an inferior and to require, in the field of higher education, the preservation and maintenance of the policy of "white supremacy."

The issue which the Court must decide is whether such regulations meet the requirement of the Fourteenth Amendment that no state shall deny to its citizens "the equal protection of the laws." Once the issue is clearly seen, we submit that only a negative answer is possible.

4. An affirmative answer was given by this Court to a similar question in *Plessy v. Ferguson*, 163 U. S. 537. As we have pointed out in our brief in the *Henderson* case, No. 25, this Term, it did so only by ignoring the very important distinction between a provision of law *permitting* individuals to separate themselves according to race and a provision *requiring* them to do so. It treated compulsory and permissive separation as identical. Thus the Court said that "we cannot say that a law which authorizes or even requires the separation of the two races in public conveyance" is violative of the Fourteenth Amendment. 163 U. S. at 550. And the argument against the statute, the Court said, "assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the Negro except by an enforced commingling of the two races." 163 U. S. at 551. The argument, of course, need make no such assumption. The alternatives are not enforced segregation or enforced commingling.* Nor is the question whether a state may constitutionally per-

*These alternatives could possibly be argued to be exclusive only in cases involving compulsory public education if there is no choice as to attendance or seating arrangements.

mit the separation of the races. The alternative to enforced segregation is freedom of choice and the question is whether a State may deny that freedom to individuals and require them, willy-nilly, to separate according to race.

The Court could confuse the issue, as it did in the *Plessy* case, only because it implicitly assumed throughout the opinion that the Negro race was "inferior" and that, given freedom of choice, all whites would refuse to associate with Negroes. On that assumption, and only on that assumption, the only alternatives were segregation and compulsory intermingling, and permissive separation was the same thing as compulsory separation.

The assumption is false. The Congress of Industrial Organizations is living proof that it is false. And, apart from matters of proof, certainly such an assumption, embodying itself the very prejudices at which the Fourteenth Amendment was aimed, has no place in our constitutional doctrine.

For these reasons, we believe that the answer given by the Court in *Plessy v. Ferguson*, resting as it does on the implicit assumption of Negro inferiority, was not only wrong but itself embodied the evil at which the Fourteenth Amendment was directed. We believe that the Court should again state what it said so clearly in *Buchanan v. Worley*, 245 U. S. 60, 81, that the Fourteenth Amendment deprived the States of the power "to require by law . . . the compulsory separation of the races on account of color, . . ." We believe that at least where no purpose is vouchsafed for the requirement of such compulsory separation other than its desirability *per se* (and no such other purpose is suggested in the cases of higher education now before the Court) the Court should hold that such compulsory separation is, *per se*, unconstitutional because it deprives both whites and Negroes of freedom of choice because of color, and nothing else.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 34

V. W. McLAUGHLIN,

Appellant.

—v.—

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION, BOARD OF
REGENTS OF UNIVERSITY OF OKLAHOMA, *et al.*

**BRIEF OF THE JAPANESE AMERICAN
CITIZENS LEAGUE, AMICUS CURIAE**

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BRIEF OF THE JAPANESE AMERICAN CITIZENS LEAGUE, *AMICUS CURIAE*

Interest of Japanese American Citizens League

The Japanese American Citizens League, hereinafter referred to as JACL, as *amicus curiae*, files this brief pursuant to the Court's Rule 27(9) and upon the written consent of the parties. JACL is the only national organization representing persons of Japanese ancestry in the United States. Its membership is open to all United States citizens without discrimination as to race, color, creed, or national origin. Its program is best summarized in its slogan "For Better Americans in a Greater America", and in the slogan of its Anti Discrimination Committee, "Equal Rights, Equal Opportunities for All". Although the JACL is primarily concerned with the problems and welfare of persons of Japanese ancestry in this country, it believes that it is appropriate that it express its views upon the fundamental personal rights involved in the instant case affecting other minorities as well as persons of Japanese ancestry.

Statement

The facts, fully set forth in the briefs of the parties, are essentially that in October 1948 appellant, a Negro, was admitted to the Graduate College of the University of Oklahoma, the only state college offering a doctorate in education, under administrative rules of the University promulgated in order to segregate Negro students from other students and under which he is required to sit apart at a special desk in the classroom doorway. In the school library he is required to sit at a designated desk on an upper floor. He may be served in the school cafeteria only at a special table reserved for him and at a time other than regular cafeteria hours.

ARGUMENT

The appellant's segregation solely on the basis of race or color is a violation of the Fourteenth Amendment's requirement of equal protection of the laws.

This Court has never expressly approved as constitutional the racial segregation practiced in the public school system of many states and of the District of Columbia. The doctrine of so-called "separate but equal" public accommodations has not been held to satisfy the "equal protection of the laws" required by the Fourteenth Amendment in any of the cases involving racial segregation in public education which has come before the Court. *Fisher v. Hurst*, 333 U. S. 147; *Sipuel v. Board of Regents*, 332 U. S. 631; *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337; *Gong Lum v. Rice*, 275 U. S. 78; *Berea College v. Kentucky*, 211 U. S. 45; *Cummings v. Richmond County Board of Education*, 175 U. S. 528.

The fact that in practice the separate public educational facilities for Negroes or other racial minorities are never equal to the facilities for the white majority has been established beyond serious question. The complete failure in fact of the "separate but equal" doctrine is succinctly recorded in the Report of the President's Committee on Civil Rights, "To Secure These Rights", p. 167:

"The separate but equal doctrine has failed in three important respects. First, it is inconsistent with the fundamental equalitarianism of the American way of life in that it marks groups with the brand of inferior status. Secondly, where it has been followed, the results have been separate and unequal facilities for minority peoples. Finally, it has kept people apart despite incontrovertible evidence that an environment favorable to civil rights is fostered whenever groups are permitted to live and work together. There is no adequate defense of segregation."

During the recent war hostilities an unfortunate and mistaken exercise of the war power involving racial discrimination was allowed as a temporary emergency matter. *Ex parte Japanese American Citizens League v. United States*, 323 U. S. 214; *Hirabayashi v. United States*, 320 U. S. 81; cf. Grodzins, *Americans Betrayed* (1949). But since the end of hostilities racial discrimination by governmental action has been consistently condemned as unconstitutional. *Takahashi v. Fish and Game Commission*, 334 U. S. 410; *Shelley v. Kraemer*, 334 U. S. 1; *Oyama v. California*, 332 U. S. 633.

In education some progress has been made in the last year against the practice of racial segregation. *Civil Rights in the United States in 1949*, pp. 28-36 (issued by the American Jewish Congress and the National Association for the

Advancement of Colored People. It is submitted, however, that an authoritative decision of this Court holding unconstitutional the racial segregation presented by the undisputed facts of this case, and involved in the "separate but equal" doctrine, is absolutely necessary at this time to further the elimination of the ugly and unconstitutional practice of race discrimination in public education.

The Fourteenth Amendment was adopted to protect members of the Negro race, theretofore kept in an ignorant condition, from discrimination in the States in which they resided. *Strauder v. West Virginia*, 100 U. S. 303, 307. It was believed that universal and non-discriminatory public education, perhaps more than any other single factor, would rapidly lift them to an equal social and economic status. It was hoped that in the fellowship of the public school the young of both races would achieve a mutual understanding which would eliminate the old hostility. But every effort at such common education in the States where most of the members of the Negro race resided was resisted and finally defeated under the patent evasion of "separate but equal" educational facilities.

The Fourteenth Amendment has not yet, in all these years since its adoption, been exercised fully to prevent this evasion of the constitutional rights of minorities to public education without racial segregation. The instant case presents an opportunity not only to protect those constitutional rights but also to unfetter the forces of democratic public education without segregation which will do more than any other factor to remove the racial tensions in our country. For these reasons it is urged that the segregation here involved, and the "separate but equal" doctrine in public education, be condemned as in violation of the Fourteenth Amendment.

CONCLUSION

Wherefore it is respectfully prayed that the decision of the court below be reversed.

Respectfully submitted,

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APR 4 1950
CHARLES CLARKE

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA.

BRIEF OF AMERICAN CIVIL LIBERTIES UNION, AS *AMICUS CURIAE*

AMERICAN CIVIL LIBERTIES UNION,
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The American Civil Liberties Union, which is devoted to the furtherance of the civil rights guaranteed by the Constitution of the United States, submits this brief in the belief that respondents' action in connection with the appellant constitutes a violation of that provision of the 14th Amendment to the Constitution of the United States which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." We believe that the principles expounded herein are equally applicable to *Henderson v. United States*, No. 25 and *Sweatt v. Painter*, No. 44 now before this Court.

Statement

Appellant, a Negro, has been subjected to restrictions which are not similarly placed upon white students. The appellant is a graduate student seeking his doctorate in education. Only under the primary compulsion of this Court was he finally admitted to the University of Oklahoma. He may listen to the lectures of the instructors, but he must sit at a special desk, *apart* from all the others in a doorway of the classroom; he may use the facilities of the library, but only at a desk—*apart*—on the mezzanine; he may eat in the school cafeteria, but only at a different time and at a table—*apart*—from all the others—for his use *alone*.

This brief is directed to the question of whether the Equal Protection clause of the 14th Amendment prohibits a state from segregating Negroes from Whites.

Segregation of Negroes from Whites Violates the Equal Protection Clause.

Upon one principle all the opinions which have been written by the Court upon the subject of segregation since the inception of the 14th Amendment have agreed. That principle is that no person may be stamped with a badge of inferiority by reason of his race or color. Indeed, we may take as our text for this principle the very case which is the fountain of the respondents' authorities: *Plessy v. Ferguson*, 163 U. S. 537. Mr. Justice Brown's opinion explicitly recognized that Equal Protection would not permit a State to "stamp" the Negroes "with a badge of inferiority." 163 U. S. at 551. Thus, the Court indicated that a state could not enact laws requiring Negroes "to walk upon one side of the street, and white people

upon the other, or requiring white men's houses to be painted white, and colored men's black, or their vehicles or business signs to be of different colors." 163 U. S. at 549. That principle found early expression after the 14th Amendment. As stated in *Strauder v. West Virginia*, 100 U. S. 303, 306, a case condemning systematic exclusion of Negroes from juries, the 14th Amendment is one of the three Constitutional provisions "having a common purpose; namely, securing to a race recently emancipated, * * * the enjoyment of all the civil rights that under the law are enjoyed by white persons."

Before the Civil War Negroes were slaves, and the race had long been regarded, officially and unofficially, as inferior and subject. But the 13th, 14th, and 15th Amendments prohibited the States from proceeding upon an assumption of the inferiority of Negroes. By the equal protection clause the Negroes were given "a positive immunity, or right, most valuable to the colored race,—the right to exemption from unfriendly legislation against them distinctively as colored,—exemption from legal discriminations, *implying inferiority in civil society*." *Strauder v. West Virginia*, *supra*, 307-308. (*Italics supplied*.) The States were prohibited from taking such action with respect to the Negroes as would be "a brand upon them, affixed by the law, *an assertion of their inferiority*, and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others." *Strauder v. West Virginia*, *supra*, 368. (*Italics supplied*.)

Segregation of Negroes in any fashion can only be understood as imposing upon them a badge of inferiority. Myrdal, *An American Dilemma*, vol. I, pp. 615, 640; Johnson, *Patterns of Negro Segregation*, p. 3; Fraenkel,

Our Civil Liberties, p. 201; Dollard, *Caste and Class in a Southern Town*, pp. 349-351; Note, 56 Yale L. J. 1059, 1060; Note, 29 Columbia L. Rev. 629, 634; Note, 39 Columbia L. Rev. 986, 1003. Segregation "brands the Negro with the mark of inferiority and asserts that he is not fit to associate with white people." *To Secure These Rights*, Report of the President's Committee on Civil Rights, p. 79.

What more explicit "brand" upon appellant, what clearer "assertion" of his "inferiority", could there be than the segregation within the University of Oklahoma practiced upon this appellant? Segregation in itself serves no rational purpose other than that found in the frequently asserted inferiority of the Negro. That purpose this Nation and this Court must never condone.

The case of *Plessy v. Ferguson*, 163 U. S. 537, 551, in which segregation of the races in separate railroad cars was upheld, while recognizing that the State could not "stamp" the Negroes "with a badge of inferiority", held that "solely because the colored race chooses to put that construction upon it" segregation does not imply inferiority, for the dominant whites and the state which they control make no such assumption. This astonishing assumption of fact of the *Plessy* case that segregation does not imply the inferiority of the Negroes is demonstrably without basis.

So completely is the inferior position of the Negro minority guaranteed by legal segregation that numerous Southern state courts have held that the word "Negro" or "colored person" when applied to a white person gives rise to a cause of action for defamation, a doctrine which has also been upheld by a federal court.

In *Stultz v. Cousins*, 242 F. 794 (C.C.A. 6th, 1917), it was held that a right of action for libel *per se* existed where a defendant published a false statement that the

plaintiff was a man of "one-fourth" Negro blood. The Court declared (p. 797):

"Whatever be the rule as to spoken words, the authorities establish that the publication of a writing containing such a statement in respect to a white man is libelous *per se*, at least in a community in which marked social differences between the races are established by law and custom."

In *Flood v. News and Courier Co.*, 71 S. C. 112, 50 S. E. 637 (1905), a South Carolina court ruled that the right to recover resulting from the publication by a newspaper of a statement about a white man that he was a Negro was in no way affected by the adoption of the 13th and 14th Amendments. In sustaining its position the Court argued at page 639:

"When we think of the radical distinction subsisting between the white man and the black man, it must be apparent that to impute the condition of the Negro to a white man would affect his (the white man's) social status, and in case any one publish a white man to be a Negro, it would not only be galling to his pride, but would tend to interfere seriously with the social relation of the white man with his fellow white men."

And the Georgia court, in 1907, deciding the case of *Wolfe v. Georgia Railway Electric Co.*, 2 Ga. App. 499, 58 S. E. 899, took judicial notice of the fact that to call a white man a Negro, even in good faith or through an innocent mistake, constituted an actionable wrong. The Court asserted at page 902:

"It is a matter of common knowledge that, viewed from a social standpoint, the Negro race is in mind and morals inferior to the Caucasian. The record of each from the dawn of historic times denies equality."

Referring to the "intrinsic differences" between the races the Court observed that these differences "are recognized in this state by the laws against intermarriage, by the laws for the separation of passengers by common carriers, separate schools, etc."

In similar holding the highest court of Oklahoma declared in *Collins v. Oklahoma State Hospital*, 76 Okla. 229, 184 P. 946, 947 (1919):

"In this state, where a reasonable regulation of the conduct of the races has led to the establishment of separate schools and separate establishment of separate schools and separate coaches, and where conditions properly have erected insurmountable barriers between the races when viewed from a personal and social standpoint, and where the habits, the disposition, and characteristics of the race denominate the colored race as inferior to the Caucasian, it is libelous *per se* to write of or concerning a white person that he is colored. Nothing could expose him to more obloquy, or contempt, or bring him into more disrepute, than a charge of this character."

In *Anderson v. Pantages Theatre Co.*, 114 Wash. 24, 194 P. 813 (1921), where a Negro was ejected from a theatre upon refusal to sit in the balcony, where he was assigned solely because of race, the Washington court in upholding recovery described the injury resulting from such discrimination as an "assault upon the person, and in such cases the personal indignity inflicted, the feeling of humiliation and disgrace engendered, and the consequent mental suffering are elements of actual damages for which an award is given" (p. 816).

Where white persons have been compelled to ride in Negro coaches the courts have deemed the humiliation and mortification so great as to warrant the award of

damages. *Louisville and N. R. Co. v. Ritchel*, 148 Ky. 401, 147 S. W. 411 (1912); *Missouri K. & T. Ry. Co. of Gas v. Ball*, 25 Tex. Civ. App. 500, 61 S. W. 327 (1901); *Chicago, R. I. & P. Ry. Co. v. Allison*, 120 Ark. 54, 178 S. W. 401 (1915).

There have been subsequent judicial expressions which have followed the *Plessy* case but these cases failed to examine its erroneous factual assumption that segregation is no assertion of inferiority. *Gong Lum v. Rice*, 275 U. S. 78, and cases cited. In each case in which segregation has been upheld there has been no consideration or inquiry into whether segregation of itself implies inferiority.

Can Oklahoma contend today that the official segregation of appellant is based any less on a notion of inferiority than would be a brand or a chain? The Equal Protection clause loosed the shackles and covered over the scars of the brands which had been inflicted upon any person." No less does that clause shield appellant from the brand of segregation.

The judgment should be reversed.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION,
Amicus Curiae.

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